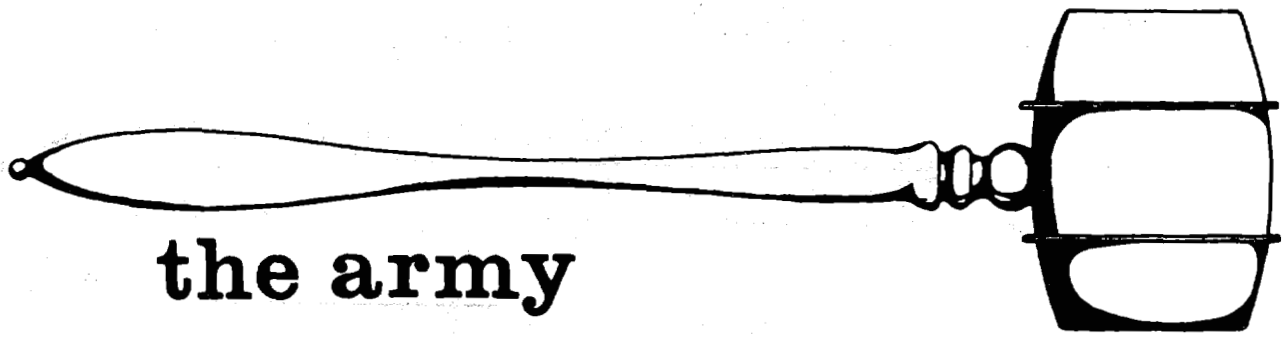

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Tempia, Turner, McOmber and the Military Rules of Evidence: A Right to Counsel Trio with the New Look

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Several significant developments in the law of military interrogations warrant an examination of a military suspect's rights to counsel. First, a series of Court of Military Appeals decisions within the last year or so have either clarified or expanded military case law on military interrogations. Secondly, and most important, the pending new Military Rules of Evidence[1] will implement a large amount of military case law, in some instances alter existing law and on the whole more closely align the military interrogation practices with prevailing civilian rules. Analysis of these developments will center on the three key facets of the service member's right to counsel at military interrogations:

—Fifth Amendment Rights: The *Miranda-Tempia* Right to Counsel Warnings;

—Sixth Amendment Rights: Right to Consult with Counsel During Interrogations; and

—Article 27, U.C.M.J. Rights: Notice to Suspect's Counsel of Pending Interrogation.

At least one of the foregoing rights will raise its head at any given interrogation. And al-

though occasionally, two or more will be raised in any given interrogation case, each will be here treated separately. Likewise, counsel who are faced with litigating the admissibility of an accused's statement should initially approach the right to counsel issues separately, beginning with an analysis of the applicable right to counsel warnings. It is that facet to which we first turn.

I. THE RIGHT TO COUNSEL WARNINGS

The fifth amendment right to remain silent serves as the keystone for the rights warnings requirements mandated by the Supreme Court in *Miranda v. Arizona.*[2] Citing numerous works, statistics, and plain common sense, the Court recognized the vital need for insuring the option for a suspect to either remain silent or to make a voluntary statement. In particular, the police station interrogation was all too often equated with coercion, deception, and intimidation. Resisting arguments that police functions would be fatally undermined, the Court mandated the now familiar *Miranda* warnings.[3] Despite efforts to modify *Miranda* through judicial and legislative[4] channels, the case stands. More important is that the application of the *Miranda* warnings stands and is applicable to military interrogations through the Court of Military Appeals' decision in *United States v. Tempia.*[5] The present-day applicability of the *Miranda-Tempia* decisions to military interrogations centers on a number of recurring issues:

—Delineating who must give the warnings;

—The definition of "custodial interrogation"

—The scope of the right to "counsel";

—Waiver of the right to counsel; and

—The *Miranda* exclusionary rule.

The following discussion will in turn center on each of these issues with attention being given to recent case law and the pending rules changes in the *Manual for Courts-Martial.* We first address the question of who must give the right to counsel, the *Miranda-Tempia,* warnings.

A. Who Is Required to Give the *Miranda-Tempia* Warnings?

The *Miranda* decision requires that the counsel warnings be given by law enforcement officers.[6] The 1969 *Manual for Courts-Martial*

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provision noted that the Article 31(b) warnings[7] and the right to counsel warnings were to be given by persons "subject to the code or acting as an instrument of such a person or a unit of the armed force."[8]

The new Military Rules of Evidence provision on this point also links the *Miranda* warnings with Article 31(b) warnings, and states that the right to counsel warnings must be given by persons subject to the Uniform Code of Military Justice.[9] By definition, those persons knowingly acting as an "agent of a military unit or of a person subject to the Uniform Code of Military Justice" must also give the *Miranda* warnings.[10]

The linkage between Article 31(b) warnings and the Miranda warnings is not new to military case law which in the past has often rested upon the Article 31(b) "persons subject to the Code" language in determining who must give the *Miranda* warnings.[11] However, it is clear that not *everyone* subject to the Code need give *Miranda* warnings—only those acting in either an official capacity[12] or those in a position of authority[13] over the suspect and then only when the suspect is in "custody."

Civilian investigators questioning a service member are of course bound by the *Miranda* requirements but foreign investigators are not necessarily so bound. A recent example of this was presented in *United States v. Jones*[14] where German law enforcement agents interrogated the accused "for the benefit of the German Government."[15] His statements to the foreign police were admitted into evidence at his court-martial over the defense objection that no proper *Miranda* warnings had been given. The Court of Military Appeals held that the German interrogators were not required to give any *Miranda* warnings because under the facts presented they had not acted as "instrumentalities" of military authorities.[16] Had military investigators played an active role in the interrogation or had the Germans conducted the interrogation at the request of military authorities, the accused's argument would have no doubt prevailed.[17]

Another permutation of the question of who must give the warnings relates to the oft-used police tactic of using informants or police in an undercover capacity to elicit incriminating evidence from suspects. Absent possible sixth amendment problems, civilian courts generally have little problem in relieving the questioners from giving the *Miranda* warnings; if not for policy reasons, at least for the reason that most of the undercover activity is not "custodial."[18] To date, the military courts, with only a few exceptions,[19] have not required warnings. Here too, the military courts have compared the Article 31(b) warnings with the *Miranda* warnings. If the military interrogator need not give warnings under Article 31, no *Miranda* warnings are required.[20]

The practice of using informants was recently examined in *United States v. Kirby*[21] where Air Force OSI agents used the volunteered services of the accused's roommate to recover some stolen property. The Court of Military Appeals could find no requirement to warn and noted that the informant who volunteered his services had not acted in an official capacity although the OSI office was aware that he would attempt to obtain the contraband. The court specifically declined to set out a "comprehensive statement of the precise characteristics of officiality where the other party is not a person known to the accused as a law enforcement officer or a superior."[22]

However, Rule 312(d)(1)(B), discussed in the next section, requires that undercover agents or informants must give right to counsel warnings if the suspect has been charged or is in some form of pretrial restraint.

B. Custodial Interrogations

Once the initial question of deciding "who" must give the *Miranda* warnings is settled, the issue of "when" the warnings must be given may be addressed. That issue may be further reduced to two points: The definition of "custody" and the definition of "interrogation."

First, as to the element of custody, the *Miranda* warnings, according the the Supreme Court, were required when questioning was initiated by law enforcement officers after a person was taken in custody or otherwise deprived of his freedom of action in any significant way.[23] The new provision in the Military Rules of Evidence, Rule 305(d)(1), states that counsel warnings are required when:

> *(A) . . . [T]he accused or suspect is in custody, could reasonably believe himself or herself to be in custody, or is otherwise deprived of his or her freedom of action in any significant way; or*
>
> *(B) The interrogation is conducted by a person subject to the Uniform Code of Military Justice acting in a law enforcement capacity, or an agent of such a person, the interrogation is conducted subsequent to preferral or charges or the imposition of pretrail restraint under paragraph 20 of this Manual, and the interrogation concerns the offenses or matters that were the subject of the preferral of charges or were the cause of the imposition of pretrial restraint.*[24]

Note that this provision expands the requirement of warnings to situations which may not necessarily be "custodial" but occur after preferral of charges or pretrial restraint. Determining whether the suspect has been charged or is in restraint should provide no problems. Unfortunately for the practitioner, few hard and fast rules apply in defining "custody." An imprisoned suspect has normally been considered to be in custody[25] but not all police-station interrogations are custodial.[26] Conversely, not all interrogations conducted in the surroundings familiar to the suspect are necessarily non-custodial.[27]

While the Supreme Court is apparently limiting those situations which might normally be considered custodial[28] the military courts do not reveal an eagerness to so reduce the impact of *Miranda*. That is probably true in part to the recognition by the courts of the subtle, inherent coerciveness, that of necessity exists in the military.[29] But again, not all military interrogations are custodial nor does the superior-subordinate relationship between interrogator and suspect necessarily in and of itself require a finding of custody.[30]

To meet the task of determining whether the suspect was in custody, the various state, federal, and military courts have relied on several different tests: the subjective intent of the questioner, the subjective intent of the suspect, and an objective test.[31] Application of either of the first two obviously presents a possibility for judicial swearing contests. The objective test, applied by at least one federal circuit court[32] and apparently adopted in a military decision, *United States v. Temperley*,[33] has apparently been incorporated in large part in the new military evidence rules.[34] The new military test, a hybrid of sorts, requires at least some consideration of the circumstances of the interrogation through the eyes of the suspect. The intent of the interrogator is apparently not a factor under the new rule.

The second portion of the inquiry of when the warnings are required turns on the definition of "interrogation." *Miranda* speaks simply in terms of "questioning" although more recent Supreme Court decisions have expanded the requirement to those situations where the interrogators engaged in conversations designed to elicit incriminating information. A striking example of this is the now well-recognized conversation, the "Christian Burial Speech," initiated by the detective in *Brewer v. Williams*.[35] The military courts have likewise adopted a broader application of "interrogation" to include conversations or discussions. In *United States v. Borodzik*,[36] for example, the Court of Military Appeals indicated that:

> When conversation is designed to elicit a response from a suspect, it is interrogation, regardless of the subtlety of the approach.[37]

A fascinating example of the "subtle" approach occurred in *United States v. Fox*[38] where the interrogator stopped to chat with the suspect. He engaged him in a two-hour long "cat-and mouse" game—a game successfully thwarted by the mouse, according to the court. Ironically,

after the so-called chat had ended, the suspect voluntarily implicated himself.[39] The court sustained the conviction but cautioned against such police practices.

The broader definitional approach to interrogation has been incorporated in the new Military Rules of Evidence. Rule 305(b)(2) provides:

> *"Interrogation" includes any formal or informal questioning in which an incriminating response either is sought or is a reasonable consequence of such questioning.*

Left for further litigation is the question of whether military interrogators must give *Miranda* warnings prior to asking what are typically characterized as threshold or pedigree questioning. The civilian courts have generally recognized no such requirement[40] but in those military cases where, for example, the suspect's identity was in issue, failure to give the *Miranda* warnings was fatal.[41] However, where identity is not in issue or where the individual is not a suspect, the courts will not normally require the *Miranda* warnings.[42]

Still exempt from *Miranda-Tempia* warnings are the spontaneous or volunteered statements from the suspect.[43] And interrogations which are affected only by the Article 31(a) privilege against self-incrimination do not include a right to counsel.[44]

C. The Right to "Counsel"

The Supreme Court language in *Miranda* required that a suspect receive warnings advising him of the right to the presence of an attorney, either retained or appointed. Other language indicated that denial of counsel based on indigency would not be "supportable by reason or logic."[45] The Court noted:

> In order fully to apprise a person interrogated of the extent of his rights under this system then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him.[46]

The Court of Military Appeals in *Tempia*, emphasized the foregoing language noting that for service members being interrogated, indigency could not serve as a bar to the right to counsel under *Miranda*.[47] *Tempia*, in applying *Miranda* to military interrogations, neither expanded nor contracted the *Miranda* rights.

However, in the 1969 *Manual for Courts-Martial* the framers expanded the *Miranda* rights for service members to include either a civilian counsel or appointed military counsel. No showing of indigency was required.[48] Subsequent military rights-warnings cards[49] and waiver certificates[50] broadened the *Manual* rights by informing the military suspects of the additional right to individual military counsel if reasonably available.

The new Military Rules of Evidence change this. First, as to the indigency language, the Court of Military Appeals had in two decisions, *United States v. Clark*[51] and *United States v. Hofbauer*,[52] held that because *Tempia* was used only to apply *Miranda*, the 1969 *Manual* language was too broad. A service member was entitled to appointed counsel only if, in *Miranda's* image, he could not afford a civilian counsel. But the indigency issue has apparently now shifted back to favoring the 1969 *Manual* language. Rule 305(d)(2), provides:

> Counsel. *When a person entitled to counsel under this rule requests counsel, a judge advocate or law specialist within the meaning of Article 1 or an individual certified in accordance with Article 27(b) shall be provided by the United States at no expense to the person and* without regard to the person's indigency *or lack thereof before the interrogation may proceed* [emphasis added].

The apparent intent of the drafters was to overrule *Clark* and *Hofbauer*. A military suspect is, under the new rules, entitled to appointed military counsel regardless of indigency.

The second major issue regarding limitations of the military suspect's right to counsel is whether the suspect should be entitled to an individually requested military counsel. The

new rules again make a change. A military suspect, under the new rules, *will not* be entitled to an individually requested military counsel at an interrogation. Even with this new limitation the military suspect's right to counself will remain broader than his civilian counterpart's right. In theory, at least, the civilian suspect must make some indication of indigency before receiving an appointed counsel. The military suspect may receive a military counsel by simply so indicating to his interrogators.

D. Invoking the Right—Waiving the Right

The preceding sections centered on delineation of the *Miranda-Tempia* rights warnings. Once the warnings are given to the military suspect a series of new issues arise. We turn first to the situation where the suspect requests to see counsel. Several options are available to the interrogators.

First, they may decide to either allow the suspect to arrange for counsel or they may themselves contact an attorney for the purpose of advising the suspect. If they decide not to allow the suspect to contact an attorney, then they may either release him or hold him for a reasonable time while continuing their investigation.[53] They may not, however, continue to question the suspect.[54]

Should the suspect indicate a willingness to forego the services of an attorney, then the interrogators may continue their questioning. The burden of establishing a voluntary waiver of the right to counsel rests on the Government. Although a written waiver is not a prerequisite to admissibility of a military suspect's statements under the new rules, the existence of such certainly assists the prosecutor in meeting his burden.[55] The suspect's "silence" when asked whether he wishes to see counsel does not in itself establish a waiver.[56] If the suspect does not decline affirmatively the right to counsel, the prosecutor must establish the waiver by a preponderance of the evidence.[57]

Some special problems are present for the Government if the suspect's statements were made *after* he initially indicated a desire to see a counsel. Although language in *Miranda* seems to prohibit any so-called follow-up questioning (or conversation designed to elicit a response) later Supreme Court decisions apparently make allowance for it. For example, in *Michigan v. Mosely*[58] the court stated that if a statement is later obtained the test to be applied is whether the suspect's rights to cut off questioning have been "scrupulously honored."[59] The Court of Military Appeals has followed suit in several recent cases. In *United States v. Hill*,[60] the court allowed for subsequent questioning but found no waiver under the facts presented. But in *United States v. Quintana*[61] the Government was able to sustain its burden of showing waiver, which in the court's estimation is very heavy when the statement follows an invocation of the *Miranda-Tempia* rights. Under law, there is no *per se* exclusion of those later statements.[62]

The "subsequent statement" scenario occurs in a variety of situations. Most arise in the hours or days following the invocation. Typically, the investigators follow up with an inquiry as to whether the suspect has in fact seen or spoken with a lawyer or if he has changed his mind. Most military courts recognize the validity of such a procedure.[63] A related point here, and discussed more fully in later sections, is that if the investigators know that the suspect is represented by counsel, notice must be given to that counsel of any further questioning.

E. Effect of Incomplete Warnings: The *Miranda* Exclusionary Rule

To give meaning to its mandate, the Supreme Court in *Miranda* set out its exclusionary rule:

> The prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.[64]

The military adopted the foregoing rule in the 1969 *Manual for Courts-Martial.*[65] But as in other areas of *Miranda,*[66] the Supreme Court has liberalized its application of *Miranda.* In *Harris v. New York,*[67] the court ruled that incomplete or erroneous *Miranda* warnings could nonetheless be used to impeach the accused's testimony. The *Harris* rule, however, was specifically rejected by the Court of Military Appeals in *United States v. Jordon.*[68] The court noted that the Supreme Court's decision in *Harris* would determine the issue it it turned solely on constitutional construction. However, the court continued, the 1969 *Manual* proscription had the force of law, under congressional delegation of power to the President, and would apply until changed. It has been changed.

The new Military Rules of Evidence now bring the military exclusionary rule more in line with current civilian practice. The applicable rule, Rule 304(b), allows statements obtained after faulty *Miranda* warnings to be used for impeachment.[69] Whether faulty *Miranda* warnings in a military interrogation will void any other derivative evidence is still undecided. The Supreme Court has not allowed *Harris*-type statements to serve as a valid basis for probable cause to search.[70] Note that not all defective *Miranda* warnings are necessarily fatal. Although an investigator's mistakes in giving the Article 31(b) warnings almost always call for the exclusion of any resulting statements,[71] there are several military cases which allow for "substantial compliance" in giving the right to counsel warnings. For example, in *United States v. Wilcox*[72] the investigator told the suspect that he had a right to individual military counsel at his own expense. The court noted that the advice was clearly wrong but that substantial compliance coupled with a lack of prejudice satisfied foundational requirements for the admissibility of the suspect's statements. Now, of course, even those warnings not substantially complying with *Miranda* may be used for at least impeachment.

F. Summary

The new Military Rules of Evidence obviously impact on application of the fifth amendment protections, the *Miranda-Tempia* warnings, to military interrogations. It is in this area that counsel can expect to see more conformity with civilian practice and should therefore find civilian precedent helpful in litigating the matter. Particular note should be paid to those rules which clarify and expand the definition of "custodial interrogation,"[73] establish new limits on the suspect's choice of counsel,[74] and adopt the Supreme Court's decision in *Harris v. New York.*[75] Having examined the circumstances of the interrogation to determine if *Miranda-Tempia* is applicable, counsel should next turn to consider whether any sixth amendment issues are involved.

II. THE SIXTH AMENDMENT RIGHT TO COUNSEL AT INTERROGATIONS

It is in the area of the military's application of the sixth amendment that we see the greatest expansion of the suspect's right to counsel at a military interrogation and at the same time the greatest potential for uncertainty. The seminal case is *Escobedo v. Illinois*[76]—a precursor to *Miranda.* In *Escobedo* the accused's request to see his defense counsel had been improperly thwarted by interrogators. But even absent a request from the suspect to see his counsel, sixth amendment rights may be violated. Two Supreme Court decisions, *Massiah v. United States*[77] and *Brewer v. Williams*[78] are prime examples. In *Massiah* the accused, after arraignment, was questioned by a bugged informant with his counsel present. His sixth amendment right to counsel, said the court, had been violated. A similar result occurred in *Brewer* where, after arraignment, the accused was engaged in "conversation" by a detective;[79] the court found no waiver of the accused's sixth amendment rights.[80] In neither case did the accused request to see counsel, yet the sixth amendment right to counsel was improperly denied.

The military courts, relying on *Escobedo* and its progeny have in the past generally followed the Supreme Court's rule. But in *United States v. Turner*,[81] the Court of Military Appeals, broadened the sixth amendment protections to include an accused who had not requested to see his attorney and who was not aware that an attorney had unsuccessfully attempted to see him prior to the interrogation.

After being released to military investigators by state authorities, Private Shawn Turner was placed in an interrogation room. In a neighboring office, a civilian attorney indicated to the investigators that he represented Turner on some other matters and considered himself counsel for Turner "generally"; his request to see Turner was denied. The subsequent interrogation did not include advice to Turner of the availability of an attorney. He waived his rights and confessed. The Army Court of Military Review found no denial of the accused's rights to counsel[82] but the Court of Military Appeals reversed, incorporating the dissenting opinion of the lower court's decision.[83]

The court noted that the civilian attorney's announcement that he represented the accused was sufficient for the investigators to have assumed that he in fact was the accused's attorney. Citing several state decisions, and relying principally on *People v. Donovan*,[84] the court held that the investigators' blockade had frustrated the accused's sixth amendment rights to counsel. In effect, a military suspect's counsel may now invoke the "right to see counsel."

At face value, *Turner* mandates a rule not yet required by any Supreme Court opinion.[85] The decision's full impact is yet to be seen. As a practical matter, when investigators are confronted by an "attorney" for the suspect, a few questions of the visitor may reveal whether in fact a relationship approximating an attorney-client relationship in fact exists with the suspect.[86]

Note that Rule 305(d)(1)(A), discussed earlier,[87] requires that counsel warnings be given at any interrogations conducted after the suspect is under restraint or charges have been preferred. This may solve in part any future *Turner*-type problems related to determining when the right to counsel attaches. It is safe to conclude that upon the occurrence of either of the foregoing events, both of the applicable fifth and sixth amendment rights will be triggered for military interrogations.[88]

Our discussion to this stage has centered on two constitutionally-based protections. We turn now to the third and final facet, a notice requirement that rests not on the Constitution, but rather on the Uniform Code of Military Justice.

III. NOTICE TO COUNSEL OF INTERROGATION

The third and final "right" to counsel, a notice requirement, rests in part on a perceived need to prevent law enforcement officials from depriving a suspect of applicable fifth and sixth amendment rights. Simply put, if the suspect has an attorney, the interrogators must give notice to that attorney of any proposed interrogations. This third "right," however, finds no consistent or clear application in the civilian courts. Unless sixth amendment rights are involved, that is, the right to counsel has attached, civilian courts will generally allow questioning of the suspect without prior notice to his counsel.[89] Clearly, a different rule applies to military interrogations.

The military's notice requirement is grounded in the Court of Military Appeals decision in *United States v. McOmber*.[90] Chief Judge Fletcher, writing for the court, noted that the leanings of the court had been toward a notice rule and stated:

> If the right to counsel is to retain any vitality, the focus in testing for prejudice must be readjusted where an investigator questions an accused known to be represented by counsel. We therefore hold that once an investigator is on notice that an attorney has undertaken to represent an individual in a military criminal investigation, further questioning of the accused without affording counsel rea-

sonable opportunity to be present renders any statement obtained involuntary under Article 31(d) of the Uniform Code.[91]

The rational for the rule was derived from Article 27 of the Uniform Code of Military Justice—not the sixth amendment.

McOmber in laying a broader, more protective statutory right to counsel, did not answer the question of whether notice was required if a different offense was later discovered and the investigators wished to renew questioning of the suspect. Nor did it answer a key issue of whether the questioning agent needed "actual" notice that an acused was represented by counsel. Each question has since been addressed by the court.

A. Interrogation for Different Offense

Apparently, if the offenses under investigation are in any way related, McOmber will apply. For example, in *United States v. Lowry,*[92] both interrogations dealt with the accused's possible role in the arson of several buildings. Although each interrogation dealt with different buildings, the court was unwilling to make "subtle distinctions" that require the separation of offense occurring within the same general area within a short period of time.[93] Recently, in *United States v. Littlejohn,*[94] the court held that no notice was required where the offenses in question were committed within two days of each other but involved distinct and unrelated matters.[95]

The important point here is the "subtle distinction" proscription in *Lowry, supra.* If the offenses are not clearly distinct and unrelated, the prudent investigator should give the *McOmber* notice to the suspect's counsel. That assumes of course that the investigator has notice that a defense counsel is representing the suspect. Despite its holding in *Littlejohn,* the court will continue to closely examine the investigator's actions and motives. If bad faith in apparent, there should be no doubt that the court will refuse to make "subtle" distinctions.

B. "Notice" of Representation by Counsel

Recall that the *McOmber* notice is required where an investigator is on notice that an attorney has undertaken to represent an individual in a military criminal investigation. A number of decisions from both the Court of Military Appeals and the various service appellate courts have concluded that in the absence of bad faith, investigators will only be required to give the *McOmber* notice if they have actual knowledege that the suspect is represented. In *United States v. Harris,*[96] the Court of Military Appeals declined to extend *McOmber's* mandate to include a requirement that the investigators inquire of the suspect whether an attorney-client relationship exists. And in *United States v. Littlejohn, supra,* the court rejected the defense argument that *McOmber* notice should have been given to the defense counsel who would have inevitably represented the accused. The *McOmber* rule, according to the court is not concerned with probable representation but rather with "an existing attorney-client relationship."[97] Again, this area is suspect; in both cases the court was persuaded by the reasonableness of the investigator's actions. Evidence of bad faith could easily change the results reached in those cases.[98]

Rule 305(e) of the new Military Rules of Evidence includes a *McOmber* notice requirement:

> Notice to Counsel. *When a person subject to the Uniform Code of Military Justice who is required to give warnings under subdivision (c) intends to question an accused or person suspected of an offense and knows or reasonably should know that counsel either has been appointed for or retained by the accused or suspect with respect to that offense, the counsel must be notified of the intended interrogation and given a reasonable time in which to attend before the interrogation may proceed.*

Note that this new rule expands the *McOmber* rule beyond the limits set by *Littlejohn* and *Harris, supra.*[99] Whether the investigator knows or should know of an existing attorney-

client relationship will obviously depend on the factors surrounding each interrogation.[100]

One defense method of short-circuiting claims of investigator ignorance might be for defense counsel to formally advise law enforcement personnel of his or her role as the accused's attorney.[101] The potential impact of this new rule probably requires that the farsighted investigator simply ask the suspect if an attornet has been appointed or retained. The investigator surely runs the risk of the suspect answering in the affirmative and invoking his right to counsel but the benefits of clearing the air and avoiding a possible *McOmber* notice problem must not be overlooked.

IV. CONCLUSION

In litigating the various issues associated with this aspect of military interrogations, counsel should resist the urge to rush into an analysis which treats only the broader, more confusing, issue of "right to counsel." Each particular "right" should first be examined separately. In any case in which an interrogation of the accused is in issue, counsel should apply a six-step analysis:

First, were right to counsel warnings required either by case law or the new rules of evidence?

Second, if the accused gave a statement without requesting counsel, is there evidence of a valid waiver of the right to counsel?

Third, if the accused gave a statement after initially requesting counsel, is there evidence to sustain the government's heavy burden of showing a valid waiver?

Fourth, if there was no compliance with the requirements to give the applicable right to counsel warnings, is the statement otherwise voluntary and therefore admissible for impeachment purposes under the new rules?

Fifth, did the accused's counsel at any time prior to, or during the interrogation, unsuccessfully attempt to see the accused? If so, there may be a sixth amendment issue.

Sixth, was the interrogator required to give McOmber *notice to counsel? If notice was given, was the counsel given a reasonable opportunity to be present?*

Counsel's analysis should begin, but in no way end with these six issues. They should be used as primary tools for focusing on the key areas. Each inquiry should then be further subjected to detailed analysis using applicable case law and the new rules as a template for specifically framing the issues to be litigated. In summary, particular attention should be paid to the major innovations in the Military Rules of Evidence which:

1. **Expand the right to counsel warnings to interrogations not necessarily custodial but occurring after charges are preferred or pretrial restraint imposed;**[102]
2. **Adopt the Supreme Court decision in *Harris v. New York*;**[103]
3. **Limit the suspect's right to individually requested military counsel;**[104]
4. **Expand the *McOmber* notice requirement to cases where the investigator reasonably should know that counsel has been retained or appointed.**[105]

These recent changes reflect a somewhat spirited growth of the rights to counsel at military interrogations and so mark a major step in the development of military criminal law. The potential for litigating right to counsel issues is ripe and the new Military Rules of evidence and recent case law insure ample opportunity for litigation.

FOOTNOTES

[1] The new Rules, approved by President Carter on 12 March 1980, will replace existing Chapter 27 of the *Manual for Courts-Martial,* United States (1969 Rev. ed.) [hereinafter cited as MCM, 1969]. The rules will be effective on 1 September 1980 and are hereinafter cited as M.R.E.

[2] 384 U.S. 436 (1966).

[3] For a discussion of the *Miranda* decision and its impact, *see* Lederer, *Miranda v. Arizona—The Law Today*, 78 Mil. L. Rev. 197 (1977). *See also* Chyette, *The Right to Counsel in Police Interrogation Cases: Miranda and Williams*, 12 U. of Mich. L. Rev. 112 (1978); Dorris, *The Declining Miranda Doctrine: The Supreme Court's Development of Miranda Issues*, 36 Wash. and Lee L. Rev. 259 (1979); Sunderland, *Self-Incrimination and Constitutional Principle: Miranda v. Arizona and Beyond*, 15 Wake Forest L. Rev. 171 (1979).

[4] *See* 18 U.S.C. § 3501 (1970), The "Post-Miranda Act" or the "Anti-Miranda Act" which was enacted as part of the Omnibus Crime Control and Safe Streets Act of 1968. Pub. L. No. 90–351, 82 Stat. 197.

[5] 16 C.M.A. 629, 37 C.M.R. 249 (1967).

[6] 384 U.S. at 444.

[7] The Article 31(b) warnings, the military's statutory warnings, do not provide a right to counsel warning. They are separately required although the 31(b) warnings and the *Miranda* right to counsel warnings are almost always given contemporaneously. Most military cases thus merge discussion of both.

[8] MCM, 1969, para. 140*a*(2).

[9] Rule 305(d), M.R.E.

[10] Rule 305(b)(1), M.R.E.

[11] *E.g.*, a company commander. *See* United States v. Jordon, 20 C.M.A. 614, 44 C.M.R. 44 (1971).

[12] MCM, 169, para. 140*a*(2).

[13] The Court of Military Appeals has required the Article 31(b) warnings, and by implication the *Miranda-Tempia* warnings of those questioners in a position of authority over the suspect. *See, e.g.*, United States v. Dohle, 1 M.J. 223 (C.M.A. 1975).

[14] 6 M.J. 226 (C.M.A. 1978).

[15] 6 M.J. at 227. The offenses occurred in the civilian community at the Federal Republic of Germany and the victim was a Turkish national residing in Germany.

[16] 6 M.J. at 229. *See also* United States v. Mundt, 508 F.2d 904, 906 (10th Cir. 1974); *cert. denied*, 421 U.S. 949 (1975); United States v. Kilday, 481 U.S. 655 (5th Cir. 1973).

[17] Mere presence of an American agent is insufficient to invoke *Miranda*. United States v. Welch, 455 F.2d 211 (2d Cir. 1972). And furnishing information which results in interrogation is insufficient to warrant *Miranda* warnings. United States v. Chavarria, 443 F.2d 904 (9th Cir. 1971).

[18] *See, e.g.*, Hoffa v. United States, 385 U.S. 293 (1966); *cf.* Massiah v. United States, 377 U.S. 201 (1964).

[19] *See, e.g.*, United States v. Johnstone, 5 M.J. 744 (A.F.C.M.R. 1978), *pet. granted*, 6 M.J. 145 (1978) on other issues. The Court was satisfied that the questioning by the informant was "official." The *Miranda-Tempia* warnings were not addressed; obviously under the facts the questioning was not custodial.

[20] The situation may of course arise where an interrogator not subject to the Code and not acting as an agent of the military is not required to give Article 31(b) warnings, but will be required to give a military suspect, in custody, the *Miranda* warnings.

[21] 8 M.J. 8 (C.M.A. 1979).

[22] 8 M.J. at 11 (C.M.A. 1979).

[23] 384 U.S. 436, 444 (1966).

[24] Rule 305(d)(1) M.R.E. This rule is apparently intended in part to codify Brewer v. Williams, 430 U.S. 387 (1977) and Massiah v. United States, 377 U.S. 201 (1964).

[25] *See, e.g.*, Mathis v. United States, 391 U.S. 1 (1968). Rule 305(d)(1)(A) does not really change this. The major change lies in requiring the *Miranda-Tempia* warnings after preferral of charges.

[26] Oregon v. Mathiason, 429 U.S. 492 (1977); Barfield v. Alabama, 522 F.2d 1114 (5th Cir. 1977) (murder suspect was "free" to leave); United States v. Gustafson, 17 C.M.A. 150, 37 C.M.R. 414 (1967) (suspect free to leave at any time, not under arrest).

[27] Orozco v. Texas, 394 U.S. 324 (1969) (suspect not free to leave his own room at 4 A.M.).

[28] *See, e.g.*, Oregon v. Mathiason, *supra* note 26.

[29] In United States v. Tempia, 16 C.M.A. 629, 37 C.M.R. 249 (1969) the court noted that:

> In the military, unlike civil life, a suspect may be required to report and submit to questioning quite without regard to warrants or other legal process. It ignores the realities of that situation to say that one ordered to appear for interrogation has not been significantly deprived of his freedom of action.

37 C.M.R. at 256.

[30] United States v. Jordon, 20 C.M.A. 614, 44 C.M.R. (1971). The issue of rank difference or position of authority may of course require Article 31(b) warnings. *See* United States v. Dohle, 1 M.J. 223 (C.M.A. 1975) where the court noted that "[i]ndeed, in the military setting in which we operate, which depends for its very existence upon superior-subordinate relationships, we must recognize that the position of the questioner, regardless of his motives, may be the moving factor in an accused's or suspect's decision to speak.

[31] *See* Lederer, *Miranda*, *supra* note 3 at 130.

[32] United States v. Hall, 421 F.2d 540 (2d Cir. 1969), *cert. denied*, 397 U.S. 990 (1971).

[33] 22 C.M.A. 384, 47 C.M.R. 235 (1973).

[34] Rule 305(d)(1)(A) M.R.E., note 24, *supra* and accompanying text.

[35] 430 U.S. 387 (1977).

[36] 21 C.M.A. 95, 44 C.M.R. 149 (1971).

[37] 44 C.M.R. at 151. Investigators had indirectly questioned the suspect via his wife.

[38] 8 M.J. 526 (A.C.M.R. 1979), *pet. granted*, 8 M.J. 220 (C.M.A. 1980).

[39] After they had ended their discussion the accused walked the agent to his car and after some further talk, implicated himself. The agent responded by telling the accused, "Remember, I have not asked you any questions pertaining to the case. I cannot do that." 8 M.J. at 528.

[40] Note that the Supreme Court in *Miranda* stated that "[g]eneral on-the-scene questioning as to facts, surrounding a crime or other general questioning of citizens in the fact finding process is not affected by our holding," 384 U.S. at 477.

[41] *See, e.g.*, United States v. Phifer, 18 C.M.A. 508, 40 C.M.R. 220 (1969); United States v. Allison, 40 C.M.R. 602 (A.B.R. 1969). *But see* United States v. Butler, 39 C.M.R. 563 (A.B.R. 1968).

[42] United States v. Ballard, 39 C.M.R. 563 (A.B.R. 1968).

[43] *See, e.g.*, United States v. Frederick, 7. M.J. 791 (N.C.M.R. 1979); United States v. Willeford, 5 M.J. 634 (A.F.C.M.R. 1978).

[44] Rule 305 (d)(1), M.R.E.

[45] 384 U.S. at 472.

[46] *Id.*

[47] 37 C.M.R. at 258.

[48] MCM, 1969, para. 140*a*(2).

[49] Department of the Army Rights Warnings Card, GTA 19-6-2.

[50] DA Form 3881, Rights Warnings/Waiver Certificate.

[51] 22 C.M.A. 570, 48 C.M.R. 77 (1974).

[52] 5 M.J. 409 (C.M.A. 1978).

[53] *See* United States v. Hill, 5 M.J. 114, 116-118 (C.M.A. 1978) (Fletcher, C. J., dissenting) for discussion of options available to the investigators.

[54] Rule 305(f), M.R.E. restates present law. But it leaves open the question of when, if at all, questioning may later be resumed.

[55] Rule 305(g)(1), M.R.E. provides:

> (g) Waiver. (1) General rule. *After receiving applicable warnings under this rule, a person may waive the rights described therein and in rule 301 and make a statement. The waiver must be made freely, knowingly, and intelligently.*
>
> *A written waiver is not required. The accused or suspect must acknowledge affirmatively that he or she understands the rights involved, affirmatively decline the right to counsel and affirmatively consent to making a statement.*

See North Carolina v. Butler, __ U.S. __ (1979). And a statement will not be involuntary if given by a suspect who was aware of his rights and intentionally frustrated diligent attempts to give the necessary warnings. United States v. Sikorski, 21 C.M.A. 345, 45 C.M.R. 119 (1972).

[56] United States v. Long, 37 C.M.R. 696 (A.B.R. 1967).

[57] Rule 305(g)(2), M.R.E.

[58] 423 U.S. 96 (1975).

[59] 423 U.S. at 104.

[60] 5 M.J. 114 (C.M.A. 1978).

[61] 5 M.J. 484 (C.M.A. 1978).

[62] The Court of Military Appeals in *Hill*, *supra* note 60 at 115 noted that the *per se* rule had apparently been rejected in Brewer v. Williams, 430 U.S. 387 (1977).

[63] *See, e.g.*, United States v. Hill, *supra* note 60 and United States v. Quintana, *supra* note 61.

[64] 384 U.S. at 444.

[65] MCM, 1969, para. 140*a*(2).

[66] For example, it is generally considered that the Court has whittled away at the "custody" requirement. Oregon v. Mathiason, 429 U.S. 492 (1977); Beckwith v. United States, 425 U.S. 341 (1976). *See generally* Dorris, *The Declining Miranda Doctrine: The Supreme Court's Development of Miranda Issues*, 36 Wash. and Lee L. Rev. 259 (1979).

[67] 401 U.S. 222 (1971).

[68] 20 C.M.A. 614, 44 C.M.R. 44 (1971). *See also* United States v. Girard, 23 C.M.A. 263, 49 C.M.R. 438 (1975).

[69] The new rule follows Harris v. New York, 401 U.S. 222 (1971).

[70] Massachusetts v. White, 47 L.W. 4066 (12 Dec. 1978).

[71] *See, e.g.,* United States v. Willeford, 5 M.J. (A.F.C.M.R. 1978) (failure to adequately advise of offense in question rendered statements faulty and therefore inadmissible). Rule 304(b) *supra* note 69 and accompanying text does not change this law. A statement obtained in violation of Article 31(b) is inadmissible for all purposes.

[72] 3 M.J. 863 (A.C.M.R. 1977).

[73] Rule 305(d)(1), M.R.E.

[74] Rule 305(d)(2), M.R.E.

[75] Rule 304(b), M.R.E.

[76] 387 U.S. 478 (1964).

[77] 377 U.S. 201 (1964).

[78] 430 U.S. 387 (1977).

[79] The Court found the conversation to be in fact an interrogation. *See also* note 35 *supra* and accompanying text.

[80] The decision has prompted a number of indepth articles on the subject of applicable fifth and sixth amendment rights of interrogators. *See, e.g.,* Kamisar, *Brewer v. Williams, Massiah, and Miranda: What is "Interrogation"? When Does it Matter?,* 67 Geo. L. J. 1 (1978); Kamisar, *Foreword: Brewer v. Williams—A Hard Look at a Discomfiting Record,* 66 Geo. L. J. 209 (1977).

[81] 5 M.J. 148 (C.M.A. 1978).

[82] 3 M.J. 566 (A.C.M.R. 1977).

[83] 3 M.J. 572-75 (A.C.M.R. 1977) (Costello J. dissenting).

[84] 13 N.Y. 2d 148, 243 N.Y.S. 2d 841, 193 N.E. 2d 628 (1963) (improper denial of sixth amendment right to counsel to allow interrogation to continue after accused, a lawyer retained by him, or his family request an opportunity to confer).

[85] The Supreme Court generally adheres to the commencement of formal adversary proceedings as the triggering element of the availability of the sixth amendment right to counsel. *See, e.g.,* Brewer v. Williams, 430 U.S. 387 (1977) (interrogation after arraignment); Massiah v. United States, 377 U.S. 201 (1964) (interrogation after arraignment). *See generally* Cooper, *The Sixth Amendment and Military Criminal Law: Constitutional Protections and Beyond,* 84 Mil. L. Rev. 41 (1979).

[86] *Turner* does not allow an "interloper" to invoke the suspect's sixth amendment rights, nor would it allow a counsel who will perhaps inevitably represent the suspect, to invoke the right. *Turner* should be limited to those situations where an attorney-client relationship exists.

[87] *See* note 24 *supra* and accompanying text.

[88] Under the new rules, Turner arguably could have received right to counsel warnings because he was under pretrial restraint. The new rules do not further define "pretrial restraint."

[89] *See, e.g.,* United States v. Newell, 578 F.2d 827 (9th Cir. 1978) (good discussion comparing civilian and military notice rules); United States v. Cobbs, 481 F.2d 196 (3rd Cir. 1973), *cert denied,* 414 U.S. 980 (1973); United States v. Wolff, 495 F.2d 35 (8th Cir. 1974).

[90] 1 M.J. 380 (C.M.A. 1976). For some initial impressions of the decision *see,* Lederer, *United States v. McOmber, A Brief Critque,* The Army Lawyner, Jun. 1976, at 5.

[91] 1 M.J. at 383.

[92] 2 M.J. 55 (C.M.A. 1976).

[93] 2 M.J. at 59.

[94] 7 M.J. 200 (C.M.A. 1979).

[95] *See also* United States v. Harris, 7 M.J. 154 (C.M.A. 1979) where the court required no notice where first interrogation involved unrelated civilian offenses.

[96] 7 M.J. 154 (C.M.A. 1979).

[97] 7 M.J. at 203.

[98] Indeed, Chief Judge Fletcher's dissent in *Littlejohn* rested on what he perceived to be the surreptitious activities of the investigator. The investigator's call to the staff judge advocate was not, in his view, for the good faith purpose of determining the status of an attorney-client relationship but rather an effort to avoid calling the defense counsel. 7 M.J. at 203–204.

[99] *See* United States v. Roy, 4 M.J. 840 (A.C.M.R. 1978) where the investigator did not give the *McOmber* notice before interrogating the suspect just one day before the Article 32 investigation was to begin. Most would agree that a military investigator knows, or should know, that by the time court-martial charges have reached that stage the accused has a defense counsel.

[100] Factors which might be considered include:

a. Whether the interrogator knew that the person to be questioned had requested counsel;

b. Whether the interrogator knew that the person to be questioned had already been involved in a pretrial proceeding at which he would be ordinarily represented by counsel;

c. Local standard operating procedures;

d. The interrogator's military assignment and training; and

e. The interrogator's experience in the area of military criminal procedure.

[101] For a sample written notice which counsel could use, *see* 10 The Advocate 194–196 (1978).

[102] Rule 305(d)(1)(A), M.R.E.

[103] Rule 304(b), M.R.E.

[104] Rule 305(d)(2), M.R.E.

[105] Rule 305(e), M.R.E.

The Impact of Article 82 of Protocol I to The 1949 Geneva Conventions on the Organization and Operation of a Division SJA Office

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Currently, the State Department is reviewing and drafting comments to the Protocols to the 1949 Geneva Conventions. The purpose of this Article is to determine what impact Article 82 of Protocol I to the 1949 Geneva Conventions [1] may have on the operation of a Division SJA Office if they are adopted. The effect of Article 82 clearly depends on the interpretation of the Article. A narrow reading would require no change in peace or war. A reading with a view toward its spirit and underlying rationale may well require action by both the SJA and the Division Commander. The starting point of the analysis must begin with the origin of the Protocol.

Origin of the Protocol

In 1971 the International Committee of the Red Cross (ICRC) invited a group of governmental experts on various aspects of the Law of War to Geneva to consider modifications to the Geneva Conventions of 1949.[2] Experts, representing over 70 countries, met from 1971 to 1973 and submitted proposed texts of two new protocols to the ICRC. Beginning in 1974, four diplomatic conferences were held. On 10 June 1977, in the final act of the conferences, two proposed protocols were signed.

Protocol I modernizes of the law of international armed conflicts with specific sections dealing with such topics as medical aircraft, works and installations containing dangerous forces, and repression of breaches of the protocol. Protocol II expands on the third article common to all the 1949 Geneva conventions. This concerned conflicts not of an international nature. The specific concern of this paper is Article 82 of Protocol I—Legal Advsors in Armed Forces. This article requires legal advisors to be available to give advice to military commanders on the application of the Conventions and the Protocols and to give advice on instruction to be given to members of the Armed Forces.

The committee of experts and the diplomatic conference both recognized that the law of war would be more effectively observed if a legal advisor were available to commanders. This is an implicit recognition that the law of war as stated in both the Geneva and Hague conventions is becoming more detailed and specific over a broad range of topics. Requiring a legal advisor would be a natural consequence of the increased complexity of the law.

It is also a recognition that the commanders are responsible for their actions as professional soldiers. They are presumed to know the law and will be held accountable for their actions whether they have had any specific training in the law of war or not.

Analysis of the Language of Article 82

In order to evaluate the impact of Article 82 one must look closely to the language of the article and note what it states and perhaps just as significantly, what it does not state.

In 1973 the draft text from the governmental experts (then Art. 71) stated

> The High Contracting Parties shall employ in their armed forces in time of peace as in time of armed conflict, qualified legal advisors who shall advise military commanders on the application of the Conventions and the present Protocol and who shall ensure that appropriate instruction be given to the Armed Forces.[3]

This would have been a rather strict standard for all potential signatories to comply with. During the conference, a consensus could not be reached on this language. The language finally approved by the diplomatic conferences reads:

> The High Contracting Parties at all times, and the Parties to the conflict in time of armed conflict, shall ensure that legal advisors are available, when necessary, to advise military commanders at the appropriate level of the application of the conventions and this Protocol and on the appropriate instruction to be given to the Armed Forces on this subject.[4]

The current protocol states advisors will be available "when necessary" and specifically deleted the requirement that the advisor be a qualified legal officer. The term "military commanders" was reduced to "commanders at the appropriate level". The current article does not charge the legal advisor with the responsibility of giving instruction. The individual is to advise commanders on the appropriate instruction to be given.

Placing the key phrases side by side makes it easy to see the "watering down" that took place.

Proposed	Final
"shall employ"	—*"available when necessary"*
"advise military commanders"	—*"advise commanders at the appropriate level"*
"qualified legal advisor"	—*"legal advisor"*
"ensure appropriate instruction given"	—*"(advise) on the appropriate instruction"*

These changes diluted the impact of the article. Clearly, a "national liberation movement" could more easily comply with the final draft.[5]

By lessening the requirements of the article it has reinforced the responsibility of the commander. In the draft Article the legal advisor would ensure that the training given was correct. Presumably the legal officer would be responsible for any errors or deficiencies in the instruction. In the final form it is the commander who is solely responsible for the training and the legal advisor is merely an assistant.

Current U.S. Practice

To determine the potential impact of Article 82 the current U.S. Army practice must be examined. For convenience this examination can be divided into two areas; the availability of legal advisors to the commander and the training given to the soldiers.

The staff judge advocate's responsibilities are set forth in FM 101–5:

> The judge advocate—
>
> a. Provides legal advice to the commander, staff, and subordinate commanders on all matters involving military law . . ." [6]

At the division level of organization the Table of Organization and Equipment provides for a staff of approximately 15 attorneys to aid the staff judge advocate in accomplishing his mission.[7] Typically the staff judge advocate will delegate his responsibilities in various areas to "chiefs" of various legal sections. The SJA is free to organize the staff as he or she sees fit to accomplish the mission. In some cases the SJA may assign a trial counsel to be the prosecutor and advisor for a particular brigade. This advice is usually confined to criminal justice matters and there is little concern for the law of war.

The Department of Defense and the Department of the Army have given specific directions in the appropriate instruction to be given in the

law of war. The Department of Defense program objectives are to ensure that:

1. The law of war and the obligations of the Government under that law are observed and enforced by the U.S. Armed Forces.

2. A program designed to prevent violations of the law of war, is implemented by the U.S. Armed Forces.

3. Alleged violations of the law of war, whether committed by or against U.S. or enemy personnel, are promptly reported, thoroughly investigated, and, where appropriate, remedied by corrective action.[8]

Further, it is Department of Defense policy that . . . "the Armed Forces of the U.S. shall institute and implement programs to prevent violations of the law of war to include training and dissemination . . ." [9]

The Department of the Army has implemented this directive through AR 350-216. The Geneva Conventions of 1949 and Hague Convention No. IV of 1907.[10] This regulation assigns the responsibility to the Deputy Chief of Staff for Personnel for individual training and training at Army schools. The Judge Advocate General is responsible for the preparation of training literature to support such training.[11]

Major Army Commanders are tasked with ensuring that each member of their command has a "practical working knowledge of the Conventions and their impact on his future responsibilities." [12] At several points in a soldier's career, training is given in the law of war. Training is given during basic training, noncommissioned officer education system courses, and each level of officer service schools.[13]

It appears the United States would meet its obligation under Article 82. This conclusion was reached by the Department of Defense in commentary to the proposed Protocols.[14] The DoD position was that the U.S. was currently in compliance with Article 82 and that no U.S. action or implementing legislation would be necessary.

Compliance With a Broader Reading of Article 82

A strict reading of the Article and of the U.S. regulations leads one to conclude that the U.S. Army division currently meets the requirements of Article 82. However, it may be the case that while the letter of the law is being complied with, the U.S. practice falls short of the spirit of the article. A broader reading of the article suggests that the article envisions more than what we are currently doing. The international community has mandated the principle that commanders need ready access to legal advisors to adequately comply with the law of war. This broad reading also suggests that it is the commander in the field who is faced with the immediate decisions regarding targeting, handling of civilians, and treatment of civilians, who needs the advice of the law of war specialist. This standard or "spirit" is altogether different than what a literal reading would require.

Judged by this standard, the United States practice may not be so favorable. The actual implementation of AR 350-216 falls far short of its language. In 1976, an informal study was conducted for the Commandant of The JAG School to determine how many hours of instruction in the law of war were presented in the various army training centers and service schools.[15] Most service schools allocated two hours to the law of war in both their advanced officer courses and basic officer classes. Basic training received the same amount of time.

An article by then Major Herbert D. Williams III, "The Army Lawyer as an International Law Instructor: Dissemination of the Conventions", describes the process of how the law of war is taught to the individual soldier.

> The result is that the class gets taught by the first warm body the Deputy [Staff Judge Advocate-ed] can find available. If the chosen instructor is lucky, he may have taught the class before or at least will have sufficient time to read the Army Subject Schedule. If he's not, he will probably show the film, ask if there are any questions, muddle through some answers and dismiss the students.[16]

The other part of the broad reading of Article 82 mandates that qualified law of war advisory personnel should be immediately available to commanders. The DA Pam that describes the mission of the staff judge advocate does not address this issue. The law of war is mentioned as an aside in other "overseas responsibilities." Instructors or command advisors in the law of war are not discussed.[17]

Judged by this broader standard of Article 82, the United States practice falls short of the mark envisioned by the international community.

Implementation

Assuming one agrees with a broad interpretation of Article 82 and believes that the U.S. performance is in all possibility substandard, the last question that remains concerns what should be the optimum implementation of Article 82 at the division level.

Increased training of all personnel is certainly to be mandated. The training deficiencies must be approached from two directions. The commanders must give their time and their support to greater training. The staff judge advocate must provide a qualified instructor. Neither of these approaches will be easy. Commanders have little training time available to accomplish their essential training requirements. Commanders rarely are receptive to eliminating several hours of their training schedule in favor of law of war instruction. Not all Judge Advocates view the law of war as a worthwhile subject of instruction, and not all are receptive to its content. As one member of the 27th Graduate Class commented during one period of instruction, "This is all a bunch of crap." [18] The JAG Corps must provide the personnel in the field who can make the instruction effective.

Increasing the instruction in the law of war through formal instruction and integrated training is not a new idea. Judge Advocates have taken this position for a long time. Perhaps now, with the impact of Article 82 coupled with the increased complexity of the law, the instruction can be upgraded to fully comply with the language and spirit of Article 82 and the Army Regulation.

The most significant part of the Article 82 deals with the availability of the legal advisor for the commander. Even with the broad reading of the Article, it is left unresolved at what "the appropriate level" should be for the legal advisor. The appropriate level quite obviously depends on the nature of the mission of the commander and to a lesser extent on the training of the commander and the staff. This question can best be resolved by looking at the various levels of command and generally considering their missions and their potential for encounter with law of war issues. TM 100-5 Operations provides some insight in this regard.[19]

The company commander is the person who most likely will have the immediate contact with the problems involving identifying combatants, caring for the wounded, protection of POWs, and use of appropriate weapons. However, this is also the busiest man on the battlefield. It is the company commander who directly engages the enemy. The actions of the company commander must be almost instinctive if he is to survive and accomplish his combat mission. A legal advisor would not be an asset at this level. For most situations, the company commander must rely on his training and his instincts to make proper decisions.

The battalion commander will face most of the problems of the company commander. At battalion, increased firepower is available which will require some decisions to be made regarding targeting and proportionality. But, as with the company commander, the battalion commander has little time to reflect upon operation plans. In a tank battalion, the battalion commander may be commanding his operation from a tank. Again, the prior training of the commander must be sufficient to meet the problems as they are.

The brigade commander is given much of his resources by the division commander. With his various assets he has much more destructive

capability available to him. Depending upon the mission, he may have to coordinate air and artillery attacks. At this level, the commander begins to have a larger staff upon which he must rely. Plans at this level may be viewed more than one or two days in advance. With greater time to consider the options available, the brigade commander may be more able to use the advice of a legal advisor. A judge advocate specifically trained in the law of war would be an asset to this commander if he were immediately upon call for advice.[20]

The Division Commander currently has a JAG section. In the infantry division this may include over 14 attorneys to support the staff judge advocate.[21] At this level, operation plans could be reviewed by a staff effort. The critical function in relation to Article 82 is that the staff judge advocate must train personnel in the law of war and position those personnel so that subordinate commanders have immediate access to them. G.I.A.D. Draper, writing for the International Journal of the Red Cross, views the legal advisor as best employed from a distance.

> "It is a fallacy to think that the nearer you are to military operations the better one knows what is going on, i.e., the facts, in the legal sense. One knows only one's own immediate and tiny sector of the fighting. In general, the legal advisor is likely to be more usefully employed at a distance, and at a level of command where he is detached from the individual tactical incident. It is not a question of personal safety but of the efficient discharge of his functions." [22]

Judge advocates will certainly assume different functions in a wartime environment, but the division SJA office now should prepare its staff and structure its organization to respond to a conflict environment. The restructuring envisioned at a division office to comply with Article 82 of the Protocols need not be a major effort. It would involve increased training for judge advocates in the law of war and specific detailing of law of war experts to brigades. Along with the increased training should follow a closer review of the nature and quality of the instruction given to all levels of soldier. When specific judge advocates are detailed to be advisors to specific brigades, they should be charged with reviewing operations and contingency plans. This will increase the commander's and the JAG's awareness of the impact of the law of war.

Conclusion

The implementation of Article 82 of the 1977 Protocols depends on the interpretation that one gives to its language. Clearly, one can argue that no change in organization or operation of the division SJA office is necessary to comply with the specific requirements of the Article. Military lawyers are "available" to advise commanders in the law of war. By Army regulation, judge advocates are required to give the training in the law of war and the JAG School is for all practical purposes, the primary source for the preparation of instructional material for the Army. The individual soldier receives formal instruction at several stages in his career. Compliance therefore, is arguably complete.

A broader reading of the Article 82, and a closer look at the effectiveness of Army training could lead one to a possibly different conclusion. The training actually received by the individual soldier is usually of poor quality and given only as an afterthought. Office training in the law of war could be described as rudimentary. No special training is required of judge advocates who support the division in garrison or in combat. Specialists in the law of war are not assigned as advisors to specific brigades and judge advocates do not routinely review operation plans for law of war input.

It appears that this is a clear case when the leter of the law is followed while the spirit is neglected. It is left to staff judge advocate at the combat divisions to assume an aggressive role in increasing the awareness of the law of war and to establish the staffing necessary to aid the commander.

FOOTNOTES

[1] Art. 82 of Protocol I, Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict: Protocols I and II to the Geneva Conventions, 16 INTERNATIONAL LEGAL MATERIALS 1391 (Vol. 6, Nov. 1977). This will be referred to throughout the remainder of this paper as Art. 82.

[2] Common articles 47/48/127 and 144 of the Geneva Conventions of 1949.

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, T.I.A.S. No. 3363, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners on War, Aug. 12, 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 287 [hereinafter cited as GPW Convention]; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

[3] G.I.A.D. Draper, "Role of Legal Advisers in Armed Forces", 202 Int'l Rev. of the Red Cross 6 (Jan.-Feb. 1978).

[4] Note 1, *Supra.*

[5] This analysis was explored by G.I.A.D. Draper, Note 3, at pages 9 & 10.

[6] U.S. Department of the Army, Field Manual No. 101-5.

[7] Table of Organization and Equipment 7-440, change 14, 1 September 1977.

[8] Dept. of Defense Directive No. 5100.77 (10 July 1979) at paragraph C.

[9] *Id.* at para. E.1.b.

[10] *Army Reg. No.* 350-216 (7 March 1975).

[11] *Id.*—paragraph 4.c.

[12] *Id.* at para. 6.

[13] *Id.* at para. 5.

[14] Department of Defense law of war working group, Review and Analysis of Protocols I and II Adopted by the Diplomatic Conference on International Humanitarian Law 1977.

[15] Memorandum prepared for Commandant JAG School, Military Legal Common Subjects Taught at service schools, Training Centers for the military academy, and senior colleges (17 August 1971).

[16] The Army Lawyer as an international law instructor: Dissemination of the conventions Major Herbert D. Williams III published in International Law materials The Law of War Vol II The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia, January 1979.

[17] Note 6, *Supra,* at paragraph 40.

[18] The words are accurate to the best of this writers recollection. These sentiments were repeated in various forms and at various times during the courses of instruction. These views were not confined to one member of the graduate class. Other members expressed similar views but with slightly different *choices* of words.

[19] *U.S. Army Field Manual 100-5, Operations* (1 July 1976).

[20] The idea for the discussion of the company, battalion, and brigade commanders came from the writers' conversation with LTC John Schmidt, the Command and Management instructor at The Judge Advocate General's School.

[21] Note 8, *Supra.*

[22] Note 3, *Supra,* at page 14.

DoD Directive 7200.1 and the Army's Proposed Dollar Target System: Are Allowances Allowable?

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I. Introduction

Proper control over expenditures of federal funds as appropriated by Congress has been a matter of concern since the time of our Nation's founding.[1] That concern is currently expressed by the provisions of the Anti-Deficiency Act.[2]

The Anti-Deficiency Act (commonly referred to as Revised Statutes 3679) prohibits *inter*

alia: expenditures, contract obligations, or authorizations therefor in advance or in excess of available appropriaions; [3] the acceptance of voluntary services; [4] and expenditures in excess of administrative subdivisions of appropriations created by regulations implementing the Act.[5] In order to curtail the cavalier disregard of executive agencies toward previous congressional attempts at control, the Act also provides both criminal and administrative penalties for violations.[6] The Act also requires that violations, together with a statement of action taken against the responsible individual, be reported through the Director of the Office of Management and Budget to Congress.[7]

Pursuant to the requirements of the Anti-Deficiency Act, both the Department of Defense (DoD) and the Department of the Army (DA) have promulgated regulations designed to control agency appropriations and fix responsibility for violations of the Act. The most recent implementing DoD Directive, published in 1978,[8] made a number of changes to its predecessor.[9] DA has responded to these changes in a proposed change to its implementing regulation,[10] which includes a new system of administrative control over funds. This paper will examine both the changes to DoD Directive 7200.1 and the new Army proposal.

The examination of the Directive is twofold. First, the changes made to the Directive appear to create some internal inconsistencies which may affect Army fiscal managers. These changes are highlighted and an attempt is made to resolve those conflicts affecting fiscal management. Second, the Directive is considered in its supposed role as the basis (in part) of the Army's newly proposed system for the control of funds. Inasmuch as the Army proposal is partially grounded on one of the arguably inconsistent provisions of the new Directive, the validity of the Army interpretation of that provision is discussed in detail. Finally, the new Army proposal will be analyzed. The probable strengths and weaknesses of the system are examined and an attempt is made to predict the probability of its acceptance and implementation in light of its novel approach to the control of appropriated funds.

II. DoD Directive 7200.1

It should be noted at the outset that not every difference between the 1978 Directive and its predecessor is discussed in detail in this paper.[11] Rather, the scope of discussion is limited to those changes with a potentially significant impact on fiscal law practices in the Army. Because the changes which are discussed are found in various unconnected sections of the Directive, categories have been established to aid in understanding and clarity.

A. New Proscriptive Language.

One category of change which is of interest is proscriptive language not previously included in the DoD Directive. The first instance of such language is the prohibition pertaining to the acceptance of voluntary services or the employment of personal service "in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property." [12] Since this language is drawn directly from subsection b of Revised Statutes 3679, its inclusion in the Directive does not create a new prohibition *per se*.[13] However, the inclusion of this language for the first time may connote a greater emphasis within DoD on the often overlooked [14] "voluntary services" prohibition. Army fiscal managers should, at the very least, familiarize themselves with this prohibition and the exceptions thereto.[15]

The 1978 Directive also contains a new proscription against exceeding fund limitations imposed by statutes other than Revised Statutes 3679.[16] This provision is directed at spending limits contained in such statutes as the Minor Construction Act.[17] The inclusion of this language creates no new problem for the Army since the same prohibition was already contained in Army Regulation 37-20.[18] Additionally, the DoD Accounting Guidance Handbook (the Handbook) already included similar information.[19] Accordingly, this use of proscriptive

language appears to represent little in the way of significant change.

B. References to the DoD Accounting Guidance Handbook.

The 1978 Directive refers to the Handbook in three separate contexts in addition to listing it as one of several reference sources.[20] Because these references were not present in the old Directive, an interesting question arises as to their meaning and significance. Simply stated, the problem is that since exceeding limitations imposed by any "regulation" [21] prescribed pursuant to subsection g of Revised Statutes 3679 violates the Anti-Deficiency Act,[22] and the DoD Directive is such a regulation, if the references to the Handbook are meant to incorporate Handbook limitations into the Directive, an entirely new and expanded set of potential Revised Statutes 3679 violations have been imposed on DoD agencies. Whether reference to the Handbook by the Directive necessarily results in such incorporation is, of course, the crucial question. Only an analysis of each of the references suggests the answer.

One of the Directive's references to the Handbook is found in paragraph H.5. concerning centrally managed allotments. Since the reference only refers one to the Handbook for "more specific guidance on the requirements for *establishing* centrally managed allotments",[23] as opposed to referencing the Handbook for limitations on such allotments, it would not seem to incorporate additional limits. Rather, this reference seems quite consistent with the principal purpose of the Handbook, *i.e.*, assistance with accounting methods for different types of accounts.

A second reference to the Handbook is located in paragraph J.3. of the DoD Directive which provides:

> Once incurred, all obligations shall be recorded accurately and promptly, even if recordation results in a recorded overobligation. A violation is not avoided by the failure to record a valid obligation. For the prerequisites for the recording and reporting of obligations, [see the Handbook]. [24]

The first two sentences of the quoted paragraph announce substantive rules not found in the old Directive. However, a similar requirement was already in force within the Army.[25] Thus, the substantive language should pose no real change for Army fiscal managers. Further, the reference to the Handbook for the prerequisites of recordation appears ntither to set nor incorporate a new limitation which might result in a violation of Revised Statutes 3679. This is so because recording and reporting principles which have absolutely no effect on whether an overobligation in violation of the Anti-Deficiency Act has in fact occurred.[26] Thus, no incorporation or creation of a new species of potential violations appears to result from the second cross-reference.

The final, and most troubling, reference to the Handbook is in paragraph D.2. of the Directive:

> This Directive is the governing regulation for the administrative control of funds for all DOD components. It shall be reproduced in its entirety, without change, in the regulatory issuances of each Component. Supplemental guidance, including policy for control of nonapportoned appropriations, will be contained in the [Handbook]. Related Component issuances will be consistent with this Directive in all respects.[27]

It is these "supplemental guidance" and "policy for control" references to the Handbook, located as they are in the "governing regulation'" paragraph, which cause concern. If it is the intent of DoD to make violations of the limitations in the Handbook additional reportable violations of the Anti-Deficiency Act, the Pandora's box of fiscal law will be opened. Few Army fund managers or their legal advisors are intimately familiar with the Handbook.[28] Even those who are will be virtually unaided in distinguishing potential substantive limitations from mere accounting procedures by the Directive's nonspecific reference to "supplemental guidance."

Possibly, the preceding interpretation reads too much into the language of paragraph D.2. An equally rational interpretation might be that the only regulatory limitations for Anti-Deficiency Act purposes are those in the body of the DoD Directive itself. If so, it would follow that the "supplemental guidance" and "policy for control" references to the Handbook are merely references to aids for complying with the limitation of the Directive, not references to new and additional limits. Unless DoD issues a clarification of this paragraph, the first person to know the true interpretation of paragraph D.2. will be the unfortunate soul cited in an audit for violating Revised Statutes 3679 by reason of failing to comply with a limitation contained in the DoD Accounting Guidance Handbook. Because such a method of clarifying ambiguities is not particularly career enhancing for fiscal managers, DoD should issue immediate clarification of paragraph D.2. by less punitive means.

C. Policy Changes.

Paragraph D.2. of the 1978 DoD Directive is only one of seven parts of a new section carrying the overall designation of "Policy." [29] Despite the potentially significant ramifications of paragraph D.2., discussed above, perhaps a more important change in the 1978 Directive is reflected in paragraph D.4.

Paragraph D.4. actually includes two DoD policy changes relating to the Anti-Deficiency Act. The first relates to the use of limitations on funding documents:

> [T]he use of limitations on the funding documents should be limited to those necessary to comply with statutory provisions of the appropriate authorization or appropriation act, or to meet the needs of unusual or special situations.[30]

This new language is apparently meant to be the final shot fired in a controvery which has plagued Army fiscal managers and their attorneys for more than ten years. A detailed discussion of the controversy has been undertaken by other writers [31] and, in any event, is beyond the scope of this paper. In essence, the controversy concerned which limitations on funding documents could result in violations of Revised Statutes 3679. The problem arose when language in Army Regulation 37-20 [32] was interpreted to include all levels of fund limitations, such as limitations on funding documents imposed at installation level and below, as limitations for Anti-Deficiency Act purposes.

By 1975, the number of reported Army violations of Revised Statutes 3679 under this expansive interpretation made it clear that the Army was doing the fiscal law equivalent of falling on its own sword. In response, a memorandum from the Assistant Secretary of the Army (Financial Management) labeled the expansive theory a misinterpretation.[33] In 1977, DA issued a message stating, in short, that the only limitations on funding documents which would be considered limitations for Anti-Deficiency Act purposes would be those imposed either by or with the prior approval of DA.[34]

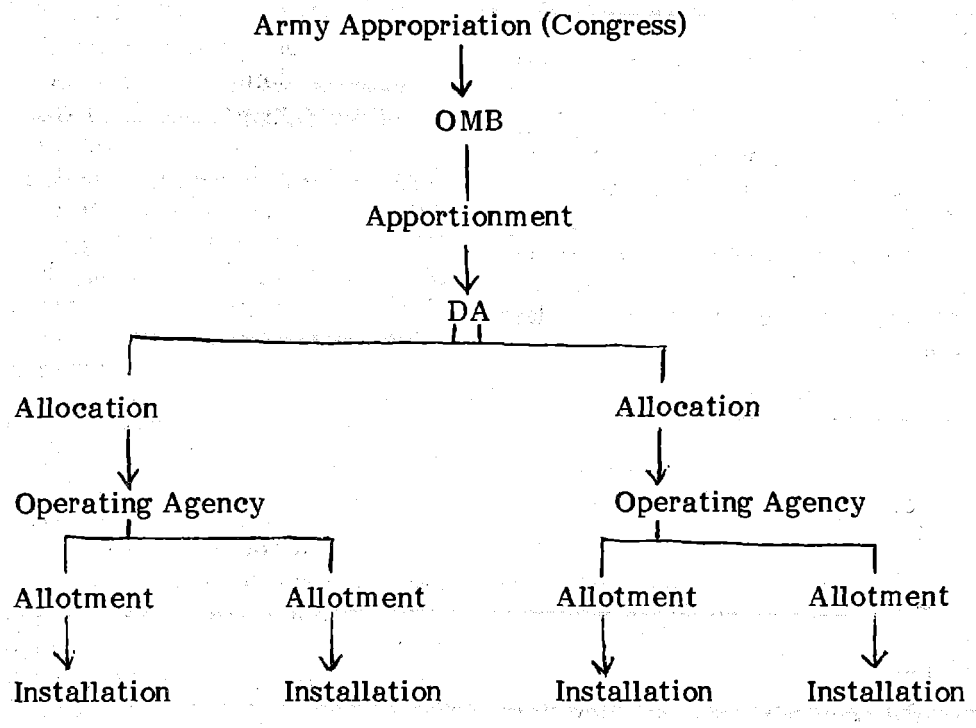
Unfortunately, neither the Assistant Secretary's memorandum nor the 1977 message purported to revise or supersede the Army Regulation. Hence, despite a relatively clear policy statement, a potential for conflict still existed.[35] Inasmuch as the quoted portion of DoD Directive paragraph D.4. seems to support the Army policy announced in the 1977 message, the controversy over which funding document limitations pose limits under Revised Statutes 3679 appears at an end.

The second policy change incorporated in paragraph D.4. of the 1978 Directive also relates to the definition of fund limitations to be used for Anti-Deficiency Act purposes, but on a potentially broader scale than the first change. This change states, in pertinent part:

> Administrative control of funds systems shall be designed so that responsibility for fund control is placed at the highest practical organizational level consistent with effective and efficient management. For example, a single allotment for an appropriation or other fund provides an appropriate basis for control without further allotting the funds

by program elements, object classes, or other subdivisions.[36]

To understand the potential implications of this change, a brief consideration of the present administrative control of funds system is necessary. Currently, when Congress enacts a Defense Appropriation, the Office of Management and Budget (OMB) provides DA with a subdivision of that appropriation called an apportionment. DA furnishes a further subdivision of those funds to each of its operating agencies by what is termed an allocation. The operating agencies create yet another subdivision of the same funds, an allotment, which is provided to installations. This system of fund control is perhaps best presented (in simplified form) in the following schematic:



Under this system of subdivision, the old DoD Directives stated as one of its purposes the fixing of responsibility "for the creation of any obligation or the making of any expenditure in excess of an appropriation, apportionment, . . . or subdivision thereof." [37] Thus, because an allotment is a subdivision of an appropriation, if an allotment was exceeded by an installation such overexpenditure was in violation of the old Directive and the Anti-Deficiency Act.[38]

The 1978 DoD Directive also contains a stated purpose concerning fixing responsibility for exceding any subdivision of funds,[39] which would seem to indicate no change in the status quo. However, when the second policy change in paragraph D.4. is considered, a potential change of great significance takes shape. The theory of the change is as follows: Paragraph D.4. calls for retaining administrative control of funds at the highest practical level. Retaining control at the highest level could mean that no formal subdivision of funds is necessary below DA. If no formal subdivisions are made below DA, only one DA fund—the DA apportionment itself—would be a limitation for purposes of the Anti-Deficiency Act. If this is so, many of the present potential violations of Revised Statutes

3679 now in existence below DA level would be eliminated.

As stated, the potential change presented by paragraph D.4. is only theory. However, the prospect of eliminating so many potential violations of the Anti-Deficiency Act has prompted the Army to propose a change to AR 37-20 which, if adopted, would change theory to fact.

III. The Army's Proposed Allowance System

A. The Proposal in General.

The Army proposal, simply stated, is to substitute allowances or "targets" for the formal subdivisions of funds currently in use (allocations and allotments).[40] Because these allowances are only targets, rather than formal limitations, obligations or expenditures in excess of an allowance would not violate Revised Statutes 3679.[41]

One perceived advantage of the proposal then, is that by eliminating formal limitations below DA level, violations of Revised Statutes 3679 by reason of exceding those limitations will also be eliminated. The Army estimates that there are currently 12,000 formal subdivision of funds.[42] These subdivisions resulted in ninety-nine (99) alleged Revised Statutes 3679 violations from the start of fiscal year 1975 to 31 August 1978.[43] Thus, establishing an allowance system could conceivably effect an administrative savings in the time spent investigating and reporting alleged violations of the Anti-Deficiency Act. Perhaps more important, eliminating numerous reports of minor Revised Statutes 3679 violations to Congress would enhance the Army's credibility as a fiscal resource manager.[44]

A second advantage of the proposed allowance system would be an improved utilization of Army appropriated funds. Under the current system, recipients of formal subdivisions of funds are held liable for exceeding that subdivision even if the overobligation or overexpenditure was caused by an unprogrammed and unexpected requirement.[45] Because of this potential liability, each of the Army's estimated 12,000 fund managers have established contingency funds.[46] Many of these contingency dollars have remained unused at fiscal year end, and thus were required to be returned to the Treasury rather than being put to use funding needed Army projects.[47] By removing the fear factor for lower level managers, and keeping a contingency reserve at DA to fund needed, but unprogrammed requirements, the allowance system would seem to provide for more efficient and effective use of Army appropriations.

Despite its asserted advantages, DoD has thus far failed to approve the Army proposal for Army-wide implementation. Although DoD has not given any reason for its hesitancy, two possible causes present themselves when the proposal is scrutinized in light of Revised Statutes 3679 and the 1978 DoD Directive.

B. DoD Directive 7200.1 as a Basis for the Army Proposal.

As previously mentioned, the principal base on which the Army proposal is founded is the second policy change in paragraph D.4. of the 1978 DoD Directive which theoretically allows retention of fund control at high levels.[48] Although the Army theory appears to be patently correct when paragraph D.4. is viewed alone, other provisions of the 1978 Directive make the theory somewhat doubtful. For example, paragraph H.1 (Allocations)[49] provides:

> The Secretary of a Military Department, or designee, *shall* make further allocations of apportioned amounts, in writing, to the heads of operating agencies. (emphasis added).[50]

Clearly, this provision is directly contrary to the Army's plan. Also, paragraph H.1 (Allotments) provides:

> The recipients of allocations and suballocations, or their designees, *shall* make allotments in specific amounts to the heads of installations or organizational units of DoD Components, as required. (emphasis added).[51]

When these apparently mandatory provisions of the 1978 Directive are applied to the

Army's interpretation that paragraph D.4. authorizes a plan of no formal subdivision of funds below DA, the conflict becomes obvious. The question remains, however, can the Army theory survive the conflict?

C. The Army Proposal as an Effective Method of Control.

Before attempting to resolve the question posed above, a second reason the Army proposal may be troublesome to DoD should be considered. This problem with the proposal requires reference to the Anti-Deficiency Act itself. Paragraph *g* of the Act provides, in pertinent part:

> [T]he head of each agency . . . shall prescribe, by regulation, a system of administrative control . . . which shall be designed to (A) restrict obligations or expenditures against each appropriation to the amount of apuportionments or reapportionments made for each such appropriation, and (B) enable such officer or agency head to fix responsibility for the creation of any obligation or the making of any expenditure in excess of an apportionment or reapportionment.[52]

Is the Army's proposed allowance system a system of control which can meet the dual requirements of restricting expenditures and fixing responsibility on those who violate the restrictions? If not, the Army proposal would create the same uncontrolled situation which caused Congress to enact Revised Statutes 3679 in the first instance.

Insofar as control over expenditures is concerned, the Army proposal places upon commanders the responsibility for keeping expenditures within their respective allowances.[53] On the other hand, the allowance system is meant, in part, to provide for allowances to be exceeded without incurring the sanctions of Revised Statutes 3679. In short, the question becomes: will commanders and their key subordinates retain fiscal control in good faith under the relaxed system, or are statutory controls and sanctions necessary? This question, of course, is highly subjective and no definite answer is possible. There seems little doubt, however, that the question itself is causing DoD to make a very cautious appraisal of the Army proposal.

As to fixing responsibility for violations of Revised Statutes 3679, the Army proposal apparently simplifies an often vexing problem. Under the Army plan, the Commander, U.S. Army Finance and Accounting Center (USAFAC) would be in charge of controlling the new funding system.[54] Likewise, the USAFAC Commander will always be the responsible person if the Anti-Deficiency Act is violated.[55] In view of the criminal and administrative penalties available to be used against those responsible for violating Revised Statutes 3679,[56] the USAFAC Commander's billet should become the least desirable assignment in the Army. More important, such a predetermination of responsibility does not satisfy the congressional requirement underlying the Anti-Deficiency Act. Congress has made it quite clear, in previous pronouncements from that august body, that they want to know who actually caused the violation.[57] The Army proposal to offer up a permanent sacrificial lamb completely fails to meet the congressional requirement.[58]

IV. Summary and Conclusion

The preceding examination of the 1978 edition of DoD Directive 7200.1 attempts to alert the reader to possible implications of some of the more important changes contained herein. The most important potential implication is the asserted authorization of the Army's proposed allowance system by the change announced in paragraph D.4. of the Directive. The unresolved question remains, to borrow from this writing's title: Will DoD allow the allowance system to go into effect? In view of DoD's recent decision to permit DA to make a limited test of the allowance concept,[59] it appears that only time will tell.

One question apparently has been resolved by the DoD test authorization, *i.e.*, that the Army interpretation of paragraph D.4. of the 1978 Directive is correct.[60] However, as noted

in the following discussion, one of the conflicting provisions may yet be cited by DoD as a reason for modifying the Army concept.

In the view of this writer, the Army concept is good and the advantages sought to be achieved through its implementation are worthy ones. However, the proposal to make HQDA the only organization with a formal subdivision of funds may place statutory control at too high a level. The reason it may be too high is that the key issue concerning the Army proposal is control. And it is on the point of control that the interests of DoD and DA are somewhat divergent. From DoD's standpoint, the administrative hardships and embarrassments caused to DA by reporting minor low level Revised Statutes 3679 violations are probably viewed as "personal" problems of the Army with little DoD impact. On the other hand, permitting the Army to remove all statutory controls over fund subdivisions may be viewed by DoD as creating the potential for a super violation of the Anti-Deficiency Act—namely, an overobligation or overexpenditure of the entire Army apportionment. Obviously, a violation of that magnitude would bring the wrath of Congress down on DoD as well as DA. It seems unlikely DoD will be willing to bear this risk.

DA's position will probably remain that the advantages it seeks to attain—increasing efficiency by removing the threat of low level violations of Revised Statutes 3679, and eliminating the need for reporting these minor and often meaningless violations—are premised on the removal of strict controls.

It is suggested that these divergent views can be reconciled by a modification of the Army proposal. The suggested modification is to continue formal subdivisions of funds to the level of major operating agencies, rather than having the last formal subdivision at DA, and use the allowance or target system below that level. This system would not only better meet the needs of both DA and DoD, but it would also serve to reconcile conflicting language in the DoD Directive.

By keeping the allocation to major operating agencies in effect, but removing allotments to installations and below in favor of allowances, the Army goals of improving working level efficiency and ridding itself of minor low level violations would still be met. Further, leaving the strict prohibitions and censures of the Anti-Deficiency Act at the major command level would benefit both DoD and DA. DA would be benefited because its proposal depends on command control to work, and the major commanders would doubtless insure it did work when a violation of the Anti-Deficiency Act in their command is the alternative. DoD would be benefited because the risk of a DA level violation with its corresponding impact on DoD would be substantially reduced. This modification reconciles the conflicting language in the Directive in that the Directive seems to absolutely require allocations to be made,[61] which they would be. Allotments, on the other hand, are not as clearly required by the language of the Directive and therefore can be discontinued without doing any great injustice to the English language in general.[62]

Perhaps the Army's allowance system will be approved by DoD in the form originally proposed. If not, it is hoped the needed improvements incorporated in the concept can still be made a reality through the modifications suggested.

FOOTNOTES

[1] The Constitution provides that "[N]o money shall be drawn from the treasury but in consequence of an appropriation made by law. *U.S. CONST.* art. I, § 9.

[2] 31 U.S.C. 665 (1976). An excellent history of the congressional struggle to obtain control over the expenditure of funds can be found in Hopkins & Nutt, *The Anti-Deficiency Act (Revised Statutes 3679) And Funding Federal Contracts: An Analysis*, 80 Mil. L. Rev. 51, 56-60 (1978) [hereinafter cited as Hopkins, *The Anti-Deficiency Act*].

[3] 31 U.S.C. § 665(a) (1976).

[4] 31 U.S.C. § 665(b) (1976).

[5] 31 U.S.C. §§ 665(g) and (h) (1976).

[6] 31 U.S.C. § 665(i)(1) (1976).

[7] 31 U.S.C. § 665(i)(2) (1976).

[8] DoD Dir. 7200.1, Administrative Control of Appropriations (November 15, 1978) [hereinafter cited as DoD Dir. 7200.1].

[9] DoD Dir. 7200.1, Administrative Control of Appropriations Within the Department of Defense (August 18, 1955) [hereinafter cited as old DoD Dir. 7200.1].

[10] Army Reg. No. 37-20, Administrative Control of Appropriated Funds (July 16, 1965) [hereinafter cited as AR 37-20].

[11] One relatively minor change which will not be discussed in detail is that what was once called an "open allotment" is now, with modifications, called a "centrally managed allotment." *Compare* old DoD Dir. 7200.1, *supra* note 9, at para. IV.E. *with* DoD Dir. 7200.1, *supra* note 8, at Incl. 3, para. F.

Another such change, apparently more a tribute to the expanding Federal bureaucracy than anything else, is that whereas "only" nine copies of a report of violation of Revised Statutes 3679 were required under the old directive, thirteen copies are required by the 1978 edition. *Compare* old DoD Dir. 7200.1, *supra* note 9, at para. XII.B(5) *with* DoD Dir. 7200.1, *supra* note 8, at para. Q.1(c).

[12] DoD Dir. 7200.1, *supra* note 8, at para. M.

[13] By including the prohibition in the DoD Directive, a "regulation" pursuant to subsection g of Revised Statutes 3679, a violation of the "voluntary services" provision may well become a violation of subsection h of Revised Statutes 3679 (violating a limit set by regulations promulgated pursuant to subsection g). Also, although duplicious, the same violation would still be a violation of subsection b of Revised Statutes 3679.

[14] For example, a number of Army Community Service activities are probably in technical violation of the "voluntary services" prohibition. To date, perhaps due to lack of emphasis on this provision within DoD, such activities have not been reported as Revised Statutes 3679 violations. Quaere: Does DoD now expect reports of Anti-Deficiency Act violations concerning such voluntary (and beneficial) activities?

[15] The principal non-statutory exception is the rather fuzzy concept that gratuitous, as opposed to voluntary, services may be accepted. *See Miller v. United States*, 103 F.2d 413 (C.C.S.D.N.Y. 1900); 26 Comp. Gen. 956 (1947); Hopkins, *The Anti-Deficiency Act*, *supra* note 2 at 69-71.

[16] DoD Dir. 7200.1, *supra* note 8, at para. O.

[17] 10 U.S.C. § 2674 (1976). One statute which often presents difficult questions concerning whether exceeding its limitations also violates the Anti-Deficiency Act is Revised Statutes 3678 (31 U.S.C. § 628). Revised Statutes 3678 provides that funds "[S]hall be solely applied to the objects for which they are respectively appropriated, and to no other." For the latest Comptroller General opinion on this subject, in which a violation of Revised Statutes 3678 was characterized as a technical but unreportable violation of the Anti-Deficiency Act, *see* Ms. Comp. Gen. B-95136, 8 Aug. 1979. *But compare* Dep't of Defense 7220.9-H, Accounting Guidance Handbook, para. 21003.B.5 (August 1, 1972) [hereinafter cited as DoD 7220.9H].

[18] AR 37-20, *supra* note 10, at para. 16a.

[19] DoD 7220.9H, *supra* note 17, at para. 21003.B.1.

[20] DoD Dir. 7200.1, *supra* note 8, at paras. D.2., J.3., and H.5 (Allotments). In an apparent attempt to make a confusing subject more confusing the writers of the Directive left out paragraph G and included two paragraph H's. Therefore, it is necessary to distinguish paragraph H (Allocations) from paragraph H (Allotments) by adding parentheticals as shown.

[21] "Regulation" as used here and in Revised Statutes 3679 is a term of art encompassing any system of administrative control of funds promulgated pursuant to Revised Statutes 3679. 31 U.S.C. § 665(g) (1970).

[22] 31 U.S.C. § 665(h) (1970).

[23] DoD Dir. 7200.1, *supra* note 8, at para. H.5. (Allotments) (emphasis added).

[24] *Id.* at para. J.3.

[25] AR 37-20, *supra* note 10, at para. 16f.

[26] *Id.*

[27] DOD Dir. 7200.1, *supra* note 8, at para. D.2.

[28] One reason for this lack of familiarity is that the Handbook is not regularly distributed to Comptrollers or Judge Advocates in the field.

[29] DoD Dir. 7200.1, *supra* note 8, para. D.

[30] *Id.* at para. D.4.

[31] Hopkins, *The Anti-Deficiency Act*, *supra* note 2, at 77-85.

[32] AR 37-20, *supra* note 10, at para. 16a.

[33] Memorandum for the Comptroller of the Army, from the Assistant Secretary of the Army (Financial Management), subject: Section 3679 of the Revised Statutes, As Amended (31 U.S.C. § 665), 30 May 1975.

[34] Message, DTG 080307Z Oct. 77, subject: Identification of Absolute Limitations Falling Under the Provisions of Section 3679 of the Revised Statutes, As Amended (31 U.S.C. § 665).

[35] Hopkins, *The Anti-Deficiency Act*, *supra* note 2, at 85.

[36] DoD Dir. 7200.1, *supra* note 8, at para. D.4. It should be noted that this change is derived from OMB Circular A-34, Instructions on Budget Execution, para. 31.2, July 15, 1976 [hereinafter cited as OMB Cir. A-34]. The change to the Directive did not, however, pick up the part of para. 31.2 of the OMB Circular which is considered to authorize the use of "targets" for managing funds:

> When a need exists for the establishment of classifications or subdivisions below apportionment and allotment control levels, they should be specifically provided for in the system and *distinguished from allotments and suballotments for the purpose of controlling apportionments pursuant to the provisions of section 3679 of the Revised Statutes.* (emphasis added)

See Hopkins, *The Anti-Deficiency Act*, *supra* note 2, at 83.

[37] Old DoD Dir. 7200.1, *supra* note 9, at para. I.B.

[38] *See* discussion accompanying note 5, *supra*.

[39] DoD Dir. 7200.1, *supra* note 8, at para. A.5.

[40] Memorandum for the Assistant Secretary of the Army (IL & FM), from the Comptroller of the Army, subject: Issuance of Fund Allowances in Lieu of Formal Subdivisions of Funds—*DECISION MEMORANDUM*, (undated draft). [The cited memorandum is one part of a four part decision packet which also includes a proposed memorandum for the Assistant Secretary of Defense (Comptroller), the proposed change to AR 37-20, and a memorandum for record. These documents will be hereinafter cited as follows: Decision Packet (Memo for ASA); Decision Packet (Memo. for ASD); Decision Packet (Proposed AR 37-20); and Decision Packet (MFR).] The reader should recognize that inasmuch as these documents are proposals in draft form, citation to them is not intended as a reference to the final or official Army position.

[41] Unless, of course, the overexpenditure, alone or in combination with others exceeded the DA apportionment. In a very recent development, DA has been authorized to test the allowance system in at least one major Army command.

[42] Decision Packet (MFR), *supra* note 40.

[43] *Id.*

[44] *Id.*

[45] AR 37-20, *supra* note 10, at para. 16k.

[46] Contingency reserves are authorized by the Anti-Deficiency Act. 31 U.S.C. 665(c)(2) (1976).

[47] The Army has lost more than three billion dollars in this manner since 1 July 1957. Decision Packet (MFR), *supra* note 40.

[48] DoD Dir. 7200.1, *supra* note 8, at para. D.4. Other legal bases are also cited by the Army in support of the proposal. However, since the other bases have existed without charge for years, and have not, during that time, been considered strong enough to support a new proposal by themselves, paragraph D.4. of the new Directive appears to be the key.

[49] *See* note 20, *supra*.

[50] DoD Dir. 7200.1, *supra* note 8, at para. H.1. (Allocations).

[51] *See* note 20, *supra*. It could be argued that the "as required" language in this paragraph means that allotments are not imperative.

[52] 31 U.S.C. § 665(g) (1976).

[53] Decision Packet (Proposed AR 37-20), *supra* note 40.

[54] Decision Packet (Memo. for ASD), *supra* note 40.

[55] *Id.*

[56] *See* note 6 *supra*, and accompanying text.

[57] Hopkins, *The Anti-Deficiency Act*, *supra* note 2, at 127-28.

[58] Perhaps the Army has just stated its position too simplistically in the proposal. The Army has previously recognized, when speaking of allowance systems, that the responsibility for a violation of Revised Statutes 3679 can only be determined by investigation. Further, such an investigation could reveal that a person exceeding an allowance or target could be named responsible for violating the Anti-Deficiency Act if his overexpenditure was the proximate cause of a higher level formal violation. *See* Hopkins, *The Anti-Deficiency Act*, *supra* note 2, at 82. There is no reason why the same analysis could not be adopted for use in the Army proposal.

[59] *See* note 41, *supra*.

[60] One must still wonder why, if the Army interpretation is correct, the proposition was not more clearly stated by DoD. For example, the propriety of an allowance system would have been much clearer had DoD simply included the complete paragraph from OMB Cir. A-34 from which Directive paragraph D.4. was derived. *See* note 36, *supra*.

[61] *See* note 49 *supra*, and accompanying text.

[62] *See* note 51 *supra*, and accompanying text. The modified system suggested also appears more in line with the Comptroller General decision cited by the Army in support of its proposal than the proposal itself is.

The decision cited by DA is 37 Comp. Gen. 220 (1957) and it is cited for the proposition that the Comptroller General has long been opposed to the vast increase in the number of formal subdivisions of funds and would prefer allowances over allotments and suballotments. Two things are worth noting about the opinion. First, the decision concerned a much smaller agency than DA, and it is doubtful that the Comptroller General intended the decision to be interpreted as a call for the total absence of statutory controls throughout an agency the Army's size. Second, as stated, its main concern was the multitude of allotment and suballotment level limitations. These levels would be eliminated under the modification suggested.

Judiciary Notes

US Army Legal Services Agency

Staff Judge Advocates are alerted to the following recurring problems:

1. Transfer of Accused. When an appellant has been transferred from a particular command, copies of the transfer orders should be forwarded to the Office of the Clerk of Court. In the event copies of the transfer orders have not been sent to the Clerk's office and, as a result, an appellate decision is forwarded to a command which no longer has jurisdiction over the appellant, the command receiving the decision should forward a copy to the staff judge advocate office of the headquarters exercising general court-martial jurisdiction over the appellant's new unit. The copy should not be simply forwarded to the gaining unit. See May 1977 *Army Lawyer*, p. 24.

2. Discharge of Appellant Prior to Completion of Appellate Review. During 1979 there were several instances wherein an accused was erroneously discharged prior to completion of appellate review because there were no copies of initial promulgating orders in the individual's MPRJ (201 File). The problem appears most frequently when an appellant has been transferred from an overseas area to a particular transfer point in the United States. The individual has been discharged at the transfer point when his record revealed no evidence of a court-martial conviction still pending appellate review. Commands should be made aware of paragraph 12-5b(10), AR 27-10, regarding placement of a copy of the initial promulgating order in the individual's 201 file. Commands should also *beware* of offering the appellant the opportunity to destroy a copy of this order by allowing him to hand carry his 201 file to the transfer point.

3. Records are continuing to arrive in the Clerk of the Court's office for appellate review without a signed receipt by the accused that he was furnished a copy of the record. If the individual has been transferred before the record has been transcribed, the record should be forwarded to the receiving command as soon as possible, and that command should serve the accused with his copy and forward the signed receipt to the Clerk's office without delay.

Digests—Article 69, UCMJ, Applications

The case of *Smith*, SPCM 1979/4594, involved the effect of the imposition of nonjudicial punishment for an unauthorized absence on a subsequent trial by special court-martial for the same absence where accused's commander set aside the nonjudicial punishment prior to trial. The case also raised the question of the effect of setting aside of the nonjudicial punishment on a subsequent prosecution of the accused for failure to perform the extra duty imposed by the set aside "Article 15."

From 4 Jul 79 until 30 Jul 79, the accused absented himself without leave from his unit. On 11 Sep 79, CPT E, the accused's commander, imposed nonjudicial punishment on the accused for this unauthorized absence. The punishment extended to reduction in grade, forfeiture of $97, extra duty for fourteen days and restriction to the company area for fourteen days. The accused did not appeal the imposed punishment.

Subsequent to 14 Sep 79, the accused performed some but not all of the extra duty, and only intermittently observed the imposed restriction. He did not perform the required extra duty on 22 and 23 Sep 79. On 1 Oct 79, the accused again absented himself without authority from his unit and remained absent until his return on 4 Oct 79.

On 5 Oct 79, CPT E set aside all the punishments imposed pursuant to Article 15, UCMJ, on the accused for his unauthorized absence from 4 Jul 79 to 30 Jul 79; CPT E ordered restored all rights, privileges and property affected. On the same day, CPT E preferred charges against the accused, *inter alia*, for the unauthorized absence from 4 Jul 79 to 30 Sep 79 (Specification 2), and for a failure to perform extra duty on 23 Sep 79 (Specification 3). On 15 Oct 79, the charges were referred for trial by special court-martial.

Punishment imposed under Article 13, UCMJ, or Article 15, UCMJ, will bar a subsequent trial by court-martial for a minor offense for which the punishment was imposed, but does not bar prosecution for a serious crime resulting from the same act or omission. Paragraphs 68*g* and 215*c*, MCM 1969 (Rev.). It is the imposition of punishment that bars subsequent trial for the same minor offense. US v. Williams, 10 USCMA 615, 28 CMR 181 (1959). That the accused serves only part of the imposed punishment does not affect his right to assert former punishment as a bar to a subsequent court-martial for the same minor offense, US v. Yray, 10 CMR 618 (AFBR 1953); even the subsequent setting aside of the Article 15 does *not* permit a trial by court-martial for that minor offense. US v. Cross, 2 MJ 1057 (ACMR 1976).

What is a minor offense depends on both the maximum imposable punishment and the circumstances surrounding the commission of the offense. US v. Harding, 11 USCMA 674, 29 CMR 490 (1960). The evaluation of an offense as minor by the accused's commanding officer is entitled to controlling weight absent an abuse of discretion. US v. Yray, *supa*. CPT E's election to treat the accused's first unauthorized absence as a minor offense was not an abuse of discretion.

Although the accused served part of the restriction and extra duty, CPT E's setting aside of the imposed punishments on 5 Oct 79 did not affect the accused's right to assert former punishment as a bar to his trial by court-martial for his first unauthorized absence. Therefore, the imposition of punishment on 11 Sep 79 barred the accused's subsequent trial by court-martial for that absence.

The failures to repair alleged in Specifications 2 and 3 of the charge were failures to repair to the extra duty imposed by the Article 15 that had been set aside. Punishment, however, may only be imposed pursuant to a valid disciplinary action under Article 15, UCMJ, a proper punishment under Article 13, UCMJ, or the sentence of a court-martial. US v. McCoy, 12 USCMA 68, 30 CMR 68 (1960); US v. Bayhand, 6 USCMA 762, 21 CMR 84 (1956); US v. Trani, 1 USCMA 293, 3 CMR 27 (1952); US v. Raneri, 22 CMR 694 (NBR 1956). CPT E's act of setting aside all imposed punishments, executed and unexecuted, destroyed the necessary predicate for the valid imposition of extra duty on 22 and 23 Sep 79. This setting aside of the executed and unexecuted extra duty precluded the later trial of the accused for not performing the previously required extra duty.

Partial relief was granted. The findings of guilty of Specifications 1, 2 and 3 of the charge were set aside and those charges dismissed; the approved sentence was reassessed on the basis of the remaining findings of guilt.

In the case of *Stephens*, SUMCM 1980/4597, the accused committed an offense on the same day he received a "short term drop" preparatory to reenlisting the following day. The accused contended that he could not be tried for an offense which occurred during a prior enlistment.

Where an accused is actually discharged, jurisdiction to try him for offenses occurring during that term of service is terminated unless saved by Article 3(a), UCMJ. This is true even though it is contemplated that the accused will

reenlist the following day, he in fact does so, and a "short term drop" is given on the previous enlistment. US v. Ginyard, 16 USCMA 512, 37 CMR 132 (1967); US v. Robson, 16 USCMA 527, 37 CMR 147 (1967).

Article 3(a) establishes continuing court-martial jurisdiction over offenses punishable by confinement for five years or more and for which the offender cannot be tried in courts of the United States. The offense in this case was not punishable by confinement for five years or more. Relief was granted.

In the case of *Herder,* SPCM 1980/4616, the accused contended that the evidence was insufficient to sustain a conviction of failing to go at the time prescribed to a room and locker inspection. The accused's platoon sergeant testified that he announced the time and place of the inspection at a platoon formation. He also testified that he did not recall seeing the accused at the meeting, but assumed he was there because he would have noticed if the accused were absent. The accused denied being at the platoon meeting and denied any knowledge of the scheduled inspection.

After viewing all the evidence in the light most favorable to the prosecution (*see* Jackson v. Virginia, 99 S. Ct. 2781 (1979)), it was concluded that an essential element of the offense had not been established beyond a reasonable doubt. The only evidence that the accused knew or had reasonable cause to know of the inspection was the platoon sergeant's opinion, as opposed to his factual observation, that the accused was present at the platoon meeting. Relief was granted.

A Matter of Record

Notes from Government Appellate Division, USALSA

1. Argument:

Trial counsel should exercise care to restrict the scope of his arguments to the strictures of paragraph 72, Manual for Courts-Martial. Recently, several otherwise well-tried cases have been jeopardized by overzealous arguments of trial counsel.

a. On Findings:

It is error to comment in any fashion on the accused's exercise of his right against self-incrimination. In a recent drug possession case, the accused took the stand in his own defense. He testified that he did not know that the package contained heroin and that he was only holding it for a friend. In closing argument the trial counsel argued that the accused would have told this story at the time of apprehension if it had been true. While this line of reasoning is eminently logical, it is an improper comment on the exercise of an accused's right to silence and could result in reversal (United States v. Mills, 7 M.J. 664 (ACMR 1979)).

b. On Sentence:

Likewise during the presentencing portion of trial the trial counsel should not excite the passions of the court members. In a recent case the accused had been convicted of indecent acts with a minor. During the presentencing hearing, the trial counsel stated that those members with children could appreciate the damaging effect of this act upon the victim. This is a potentially inflammatory argument and could lead to reversal. *United States v. Shamberger,* 1 M.J. 377 (CMA, 1976). The trial counsel should be careful neither to place the court members in the place of the victim or a relative to the victim, nor to overly excite the passions of the court members.

If general deterrence is to be argued, counsel must insure that this is only one of several criteria to be weighed by the court members in arriving at an appropriate sentence.

2. Defense Counsel:

Although an accused is generally entitled to qualified military or civilian counsel of his own choosing, trial counsel shuld be aware of the potential for abuse of this right in the hands of an obstreperous accused. In a recent case the Army Court of Military Review reversed an accused's conviction, finding (1) that the Article 32 Investigating Officer erred by denying a request for continuance to obtain civilian counsel and (2) that the military judge erred in denying the subsequent motion for appropriate relief. *United States v. Lewis,* CM 437967, __ M.J. __ (ACMR 27 February 1980). The opinion is important in that the court specifically noted that it did not find anything in the record upon which to base a determination that the accused was being unreasonable or acting in bad faith. Additionally, the court found nothing to indicate that the requested delay would have inconvenienced or prejudiced the Government. The risk of similar results in other cases persists where the record of trial fails to accurately reflect the nature of the accused's acts and his apparent motives to delay or otherwise vex justice.

Trial counsel should take reasonable steps to assist or pave the way for an accused to secure individual representation. However, when it becomes apparent that the request for delay is not made in good faith, that the accused is not making reasonable efforts to secure representation, or that the interests of the Government may be prejudiced by further delay, trial counsel should fully litigate the issue, making a complete record to support the denial of further continuance. Relevant factors in this determination include, but are not limited to, the following:

1. Is the accused's request for a continuance to obtain counsel made in good faith, or is it made for the purpose of obstructing the orderly administration of justice;
2. is the right to counsel being used as a sword to vex the proceedings with unnecessary delay;
3. did the accused make timely and realistic efforts to secure counsel, including his ability to pay for civilian representation;
4. does the requested delay jeopardize or diminish the Government's evidence.

Generally, a degree of reasonableness must be attributed to an accused's exercise of the right to individual counsel. Practically, however, the trial counsel must come forward with evidence to the contrary. Thus, trial counsel must carefully monitor an accused's efforts to obtain individual counsel and, at the appropriate time, thoroughly present his evidence in opposition to requests for continuance which are not reasonable.

3. Evidence:

a. Authentication:

When establishing the authenticity of a hearsay document, the trial counsel must be careful to fully comply with the provisions of paragraph 143*b*, Manual for Courts-Martial. In a recent prosecution for bad checks, the trial counsel needed to introduce documents from the bank's file. These documents were authenticated by a certificate as set out in paragraph 143*b*(3), Manual for Courts-Martial. However, this certificate was not signed before a Notary Public as required by the Manual. This failure to strictly comply with the Manual provisions may invalidate the certificate, and thus the necessary bank documents would not be admissible. Trial counsel should be familiar with the requirements for authentication and insure their compliance. Use of a *trial notebook* with a checklist of proof requirements is a method by which trial counsel can prevent such error.

b. Present Recollection Refreshed:

Even though the chain of custody form (DA Form 4137) has been held to be inadmissible hearsay (United States v. Porter, 7 M.J. 32), it can be qualified under the refreshing recollection doctrine to assist in establishing the

chain of custody. Under this doctrine the trial counsel must establish from the witness:

1. At present the witness does not recall what he did with the evidence;
2. that at some time in the past he did know what he had done with the evidence;
3. that the witness knows of a document (DA Form 4137) that would help him remember what action he took; and
4. that the witness can identify the DA Form 4137 as that document.

Thereafter the witness can examine the DA Form 4137, return it to the trial counsel, and *then* testify from his refreshed recollection. *See* Appendix XIV, DA Pamphlet 27-10, Military Justice Handbook (1 August 1969).

4. Jencks Act:

If tapes are made of an Article 32 Investigation, they are producible under the Jencks Act (18 U.S.C. 3500), and thus should be safeguarded. *United States v. Thomas*, 7 M.J. 655 (ACMR, 1979). The accused in a recent case was facing a general court-martial for rape. The clerk at the Article 32 had taped the hearings to aid in his duties. The defense at trial requested production of these tapes under the Jencks Act. These tapes were still in the Government's possession, yet the trial counsel successfully resisted this motion. This was error, as the Army Court of Military Review (in *Thomas*) has clearly held that these tapes are covered by the Jencks Act. Therefore the trial counsel should take care to preserve these tapes until the appellate courts have taken *final* action on the case. Destruction of the tapes may be harmless error if: 1) the tapes are inadvertently destroyed, and 2) the accused is not prejudiced.

5. Nonjudicial Punishment:

a. A record of nonjudicial punishment can be admitted as evidence only if it is maintained in the accused's records in accordance with the appropriate regulation (*i.e.*, Chapter 3, AR 27-10). In a recent case the trial counsel introduced a DA Form 26-27 which had been administered during a prior enlistment over three years before the date of trial. The Article 15 was not properly maintained in the accused's file, and hence it should not have been introduced (Paragraph 3-15, AR 27-10). Trial counsel should be familiar with regulatory filing requirements and not offer records not properly maintained.

b. The trial counsel should not introduce a record of Article 15 punishment if there is any potential problem with it. In a recent case the form contained a check mark both in the block indicating a desire to appeal and in the block indicating a desire not to appeal. No appellate action had been taken and the inconsistency was never clarified; the document was thus inadmissible. The Article 15 probably had little effect on the sentence and should not have been offered with such an obvious inconsistency. Trial counsel should examine such documents so that such blatant defects may be avoided. A needless appellate issue has been created which could impact on the results counsel had achieved at trial. If the Article 15 was considered important, independent evidence should have been introduced to resolve the inconsistencies.

Administrative and Civil Law Section

Administrative and Civil Law Division, TJAGSA

The Judge Advocate General's Opinions

(Military Installations, Law Enforcement) **Military Police Have Authority To Apprehend Persons Not Subject To The UCMJ On Military Installations.** DAJA-OL 1979/2975, 25 July 1979. In response to the Staff Judge Advocate, US Army Military Police School/Training

Center and Fort McClellan, The Judge Advocate General addressed the authority of military police to apprehend persons not subject to the UCMJ on military posts. Pointing to paragraph 2–9, AR 210–10 and relevant judicial decisions (*Greer v. Spock*, 424 U.S. 828, (1976); *Cafeteria Workers v. McElroy*, 367 U.S. 886, (1961)), The Judge Advocate General recognized that the responsibility of the installation commander to maintain law and order on a military installation provides a basis for apprehending civilians for an on-post offense. Based on this rationale, a military policeman, when acting as the agent of the installation commander, may make an on-post apprehension of a civilian who has committed an offense on the installation and, in doing so the military policeman is acting in an official capacity.

(Military Installations, Real Property) **A Service Member May Not Rent For A Personal Gain Assigned Family Housing.** DAJA-AL 1979/2553, 4 June 1979. The Deputy Chief of Staff for Personnel requested an opinion regarding the legality of a service member leasing an unused bedroom in family housing to a nonmilitary member and receiving, for personal gain, money from that rental agreement. The service member was assigned quarters on the basis of grade, not on the basis of dependents or space requirements. Therefore, the service member had an otherwise unused bedroom.

Under 37 U.S.C. § 101(25) regular military compensation includes basic allowance for quarters in cash or in kind. Public quarters assigned as family housing is considered compensation in kind. Though AR 210–50 does not specifically authorize or prohibit the rental agreement situation presented, the Comptroller General has ruled that when an employee occupies the premises of his employer as part of his compensation, the employee is in possession as a servant and not as a tenant. Therefore, the employee is without authority to sublet a portion of his assigned quarters to private and nongovernmental persons. 35 Comp. Gen. 362, 363 (1955); 7 Comp. Gen. 85 (1927). The collection of rent by the government employee in such instance was found in violation of 5 U.S.C. § 71 (now 5 U.S.C. § 5536) which prohibits receipt of compensation beyond the salary allowed by law. Accordingly, collection of this overpayment (rental income) could be pursued under the Miscellaneous Receipts statute (31 U.S.C. § 484).

Moreover, 10 U.S.C. § 2667(a) empowers the Secretary of the Army to lease real or personal property under control of the Department of Army, and such rent under 10 U.S.C. § 2667(d) will be paid into the US Treasury as miscellaneous receipts. The least arrangement involving public property was not, therefore, effected in accordance with statutory requirements.

Finally, the renting of family quarters violates para. 2–4, AR 600–50, which states that DA personnel will not directly or indirectly use, or allow the use of, government property of any kind for other than officially approved purposes. This regulatory prohibition is to uphold the general principle against using public property for private gain. Personal profit from unauthorized leasing of public property assigned as family housing would constitute a violation of para. 2–4, AR 600–50.

(Military Installations, Miscellaneous) **Local Commanders May Permit Distribution Of Discount Coupon Books Under Certain Circumstances.** DAJA-AL 1979/2753, 28 June 1979. A Staff Judge Advocate requested an opinion of The Judge Advocate General as to whether distribution of coupon booklets offering discounts on products/services is permissible under Army Regulations. The booklets were produced by a private corporation, which approaches local businesses and agrees to have a coupon for the local business placed in the booklet. For a fee the private corporation agrees to distribute the booklet throughout the area. The private corporation desired to distribute the booklets at the Federal Credit Union, PX, commissary, and administration buildings.

The Judge Advocate General opined that the local commander, after considering all the circumstances, should approve the distribution only if he concludes that there would be no

appearance of preferential treatment in violation of para. 1–3e(2), AR 600–50.

Moreover, the local commander must determine that such an activity does not constitute an acceptance of a gratuity in violation of para. 2–2b, AR 600–50 should it be determined that the participating merchants have or seek business with DOD and it is concluded that none of the exceptions to the prohibition apply. (See paras. 2–2c(2), (5), or (13), AR 600–50).

With regard to the Federal Credit Union, The Judge Advocate General advised that the federal Credit Union would not be free to distribute the booklets where such distribution would be in violation of an Army Regulation. AR 210–24 acknowledges that the activities of credit unions on military installations are subject to applicable regulatory authority.

(Military Installations, Miscellaneous) **The Installation Commander May Properly Direct Assistance Visits or Reasonable Inspections Of Thermostats In Government Family Quarters.** DAJA-AL 1979/2985, 16 July 1979. The Office of the Chief of Legislative Liaison requested an opinion as to the legality of nonconsensual inspections of thermostats in Government-owned family quarters. In finding no legal objection. The Judge Advocate General pointed to the direction of the President on 10 April 1979 that all Federal agencies embark on a plan to reduce energy consumption by 5%. Part of that plan requires specific thermostat settings for heating and cooling systems in buildings. The Department of the Army has implemented the President's plan pursuant to the Department of Defense direction.

Because installation commaders have a special responsibility to ensure proper, economic, and energy-efficient use of family quarters, an installation commander may properly direct the use of assistance visits or reasonable inspections of the family quarters to insure compliance with lawful directions relating to thermostat settings. The Presidential memorandum applies to all federally-operated buildings; therefore, Government-owned family housing comes within its mandate. Use of assistance visits that properly assure compliance with the President's directions is a reasonable exercise of commanders' authority.

The opinion reviews the Supreme Court decision, *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978), which held nonconsensual warrantless inspections of business premises by the Department of Labor agents pursuant to the Occupational Safety and Health Act of 1970 for the purpose of discovering health and safety hazards unconstitutional as unreasonable searches. The Judge Advocate General distinguished this case from the nonconsensual inspection of thermostats in Government-owned family quarters. First, the *Barlow's* case dealt with Governmental intrusion onto privately-owned premises. A service member has been determined to be no more than a licensee of Government-owned quarters, not a private holder of any real estate interest. The Government's interest in protecting, maintaining, and servicing its facilities through the use of assistance visits should outweigh any competing Fourth Amendment interests of the service member suffering such a limited intrusion. Second, the OSHA provisions had criminal and civil penalties. The inspection of the thermostats in Government-owned family quarters was aimed solely at compliance, not discovery of punishable breaches. Finally, the inspection scheme was a proper implementation of a Presidential prescription supporting congressional policy. See Sec. 541, National Energy Conservation Policy Act, Pub. L. No. 95-619, 92 Stat. 3206, at 3277.

(Line of Duty) **Soldier's Rights in a Line of Duty Investigation Are Not The Same As Those Afforded A Respondent In An Adversarial Proceeding.** DAJA-AL 1979/3040, 8 August 1979. The Army Board for Correction of Military Records requested that The Judge Advocate General review a line of duty investigation concerning an enlisted man who was injured while assaulting another man through an open window of the other's POV. His injury was incurred when he was thrown to the ground as the victim drove his car away.

The Judge Advocate General expressed the opinion that due process does not require that the subject of a line of duty investigation be afforded all of the procedural rights that would be afforded at an adversarial hearing and that the rights afforded by AR 600–33 comport with due process. In arriving at this conclusion, The Judge Advocate General considered the fact that a line of duty investigation begins with the presumption that a service member's injuries are incurred in line of duty and that the line of duty proceedings are an investigation to gather facts so that the cause of the member's injury can be determined.

The most significant issues raised in the case were:

a. Use of unsworn statements. AR 600–33 does not require that statements considered in a LOD investigation be sworn. However, the weight to be given to an unsworn statement rests in the judgment of the investigating officer UP paragraph 3–4*a*, AR 600–33.

b. Presence during questioning of witnesses. Where the physical condition of a subject of a line of duty investigation precludes his presence when witnesses are questioned; and when a representative has not yet been appointed to act in his behalf, the subject's presence at the examination of witnesses is not "practicable" within the meaning of paragraph A–3, AR 600–33.

c. Use of police reports. Police reports are documentary evidence UP paragraph 3-8*d*(10), AR 600–33, and are not considered to be statements. Therefore, paragraph 3–4*d*(2), AR 600–33, which requires that the individual being investigated be permitted to examine and refute statements from other investigations, does not apply to police reports.

Non-Judicial Punishment
Quarterly Court-Martial Rates Per 1000 Average Strength

OCTOBER-DECEMBER 1979

	Quarterly Rates
ARMY-WIDE	45.31
CONUS Army commands	48.36
OVERSEAS Army commands	40.30
USAREUR and Seventh Army commands	38.49
Eighth US Army	62.75
US Army Japan	11.68
Units in Hawaii	38.58
Units in Thailand	—
Units in Alaska	17.01
Units in Panama/Canal Zone	42.68

Quarterly Court-Martial Rates Per 1000 Average Strength

OCTOBER-DECEMBER 1979

	GENERAL CM	*SPECIAL CM*		*SUMMARY CM*
		BCD	*NON-BCD*	
ARMY-WIDE	.43	.33	.97	.90
CONUS Army commands	.24	.28	.89	1.00
OVERSEAS Army commands	.74	.42	1.11	.72
USAREUR and Seventh Army commands	.92	.41	1.03	.39
Eighth US Army	.28	.68	2.04	2.00
US Army Japan	—	—	—	.39
Units in Hawaii	.17	.28	1.06	1.12
Units in Thailand	—	—	—	—
Units in Alaska	—	.23	.91	.80
Units in Panama/Canal Zone	.14	.27	.41	4.20

NOTE: Above figures represent geographical areas under the jurisdiction the commands and are based on average number of personnel on duty within those areas.

Department of the Army
Convictions and Nonjudicial Punishments

Reporting Period

1 July to 31 December 1979

	Number and Rate/1000 of Persons Convicted and Persons Punished Under Article 15 UCMJ					
	WORLD-WIDE		*CONUS*		*OVERSEAS*	
	Number	*Rate/1000*	*Number*	*Rate/1000*	*Number*	*Rate/1000*
General Courts-Martial	601	.79	216	.46	385	1.33
Special Courts-Martial	1,683	2.21	919	1.94	764	2.64
Summary Courts-Martial	1,181	1.55	803	1.70	378	1.31
Total Courts-Martial	3,465	4.55	1,938	4.10	1,527	5.28
Nonjudicial Punishments (Art. 15 UCMJ)	70,747	92.8	47,428	100.3	23,319	80.7
US Federal & State Courts (Felony* Convictions)	437	.57	435	.92	2	.007

	Number of Discharges Adjudged and Actually Executed During Report Period							
	DISCHARGES ADJUDGED						*DISCHARGES EXECUTED*	
TYPE	*WORLD-WIDE*		*CONUS*		*OVERSEAS*			
COURT	*DD***	*BCD***	*DD*	*BCD*	*DD*	*BCD*	*DD*	*BCD*
GCM	160	313	46	122	114	191	157	400
SPCM		371		203		168		

* A conviction is reportable when the offense is a felony under the law of the jurisdiction in which the accused was convicted.

** Dishonorable Discharge; Bad Conduct Discharge.

Legal Assistance Items

Major Joel R. Alvarey, Major Joseph C. Fowler, and Major Steven F. Lancaster, Administrative and Civil Law Division, TJAGSA

1. Consumer Law—Truth in Lending Act (Regulation Z)

Failure to disclose, together with other required disclosure terms, the right to accelerate when unearned finance charges may not be rebated is a TILA disclosure violation. *Tarplain vs. Baker Ford, Inc.*, 446 F. Supp. 1340 (DC RI 1979).

The Truth in Lending Act requires disclosure of all "default, delinquency, or similar charges payable in the event of late payments [15 U.S.C. 1638(a)(9)]. These disclosures must be made together, on one side of the statement either above the customer's signature, or on the reverse side or a separate piece of paper which identifies the transaction. In the latter cases there must be a notice of where the disclosure statement is, located above the customer's signature [15 U.S.C. 1631(a) and 12 C.F.R. 226.8].

The plaintiffs, Mr. and Mrs. Tarplain, purchased an automobile from the defendant. Charges for late payments and defaults were located on the front of the disclosure statement and above the customer's signature. The reverse side contained provisions for acceleration of the entire debt upon default. The plaintiff sued alleging all disclosure were not together as the Act required.

The defendant argued he always returned unearned finance charges so that he was not required to disclose the acceleration terms on the front side of the credit agreement with the other TILA disclosure, i.e., there was no "charge" so disclosure is not required. He cited *Johnson vs. McCrackin Ford* which held that the right of acceleration need not be disclosed unless unearned interest is not rebated. *Johnson vs. McCrackin-Sturman Ford, Inc.*, 577 F2d 257 (3rd Cir. 1975)]

The court rejected the defendant's argument holding that if the creditor had the mere right to withhold the unearned finance charges, regardless of whether or not he actually did such, then he must disclose the acceleration terms with the disclosure terms. Since Rhode Island did not prohibit such a withholding, the defendan could have, if he so desired, not rebated the unearned interest. Disclosure, with the other terms was required. [Chapter 10, DA Pam 27-12].

2. Consumer Protection—Fair Credit Reporting Act—"Consumer Report" Defined

Courts continue to be inconsistent in determining whether a communication is a "consumer report" within the purview of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*). An insurer ordered a claims investigator to obtain a claims report to determine whether an insured party was entitled to medical payments. The investigation consisted of interviews of the plaintiff's neighbors but the procurer of the report did not give him prior notice that the investigation was to be conducted as required by the Act (15 U.S.C. 1681d). Plaintiff sought actual and punitive damages for the embarrassment the violation of the Act caused.

The court held that this was not a consumer report. 15 U.S.C. 1681a defines a consumer report as information that bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used, or collected in whole or part, for the purpose of considering the consumer's eligibility for, amongst other things, insurance. The court held that the statutory definition includes only those reports which are prepared to determine a consumer's eligibility for insurance and would not include those which were prepared to substantiate a disability claim, as in this case. The action was dismissed. *Cochran v. Metropolitan Life Insurance Co.*, 472 F Supp. 827 (DC Ga 1979). An opposite holding was made in *Berosch v. Retail Credit Co.*, 358 F Supp. 260 (C.D. Cal 1973). [Chapter 6, Pam 27-12].

Reserve Affairs Items

Reserve Affairs Department, TJAGSA

1. Reserve Vacancy

The 425th Transportation Brigade (MT) located at Fort Sheridan, Illinois has the position of Assistant Staff Judge Advocate open. This is a paid position for a Major or below, 48 IDT assemblies and two weeks AT each year. If interested, please call James R. Hexem at

312-751-6180 during the day or write to him at 1456 Ridge Avenue, Evanston, Illinois 60201.

2. Announcement of Change

The location for the Boston technical (on-site) training has been changed to Hangar #1, South Weymouth Naval Air Station, Weymouth, Massachusetts. Dates remain 12 and 13 April 1980.

3. Mobilization Designee Vacancies

A number of installations have recently had new mobilization designee positions approved and applications may be made for these and other vacancies which now exist. Interested JA Reservists should submit Application for Mobilization Designation Assignment (DA Form 2976) to The Judge Advocate General's School, ATTN: Colonel William L. Carew, Reserve Affairs Department, Charlottesville, Virginia 22901.

Current positions available are as follows:

GRD	*PARA*	*LIN*	*SEQ*	*POSITION*	*AGENCY*	*CITY*
LTC	18	01C	01	Legal Officer	DCS Personnel	Washington, DC
MAJ	06	04	02	Asst SJA	USA Health Svcs Cmd	Ft Sam Houston
MAJ	06	04	04	Asst SJA	USA Health Svcs Cmd	Ft Sam Houston
MAJ	05	01B	01	Legal Officer	Ofc Gen Counsel	Washington, DC
LTC	06	04	09	Mil Judge	USALSA	Falls Church, VA
LTC	05A	02	01	Dep Chief	USA Clms Svc	Ft Meade, MD
CPT	10D	05	01	JA Pers Law Br	OTJAG	Washington, DC
LTC	02	01	01	Asst Counsel	DCASR	Cleveland, OH
MAJ	04	02	01	Asst SJA	MTMC Eastern Area	Bayonne, NJ
MAJ	04	01A	01	Asst SJA	MTMC Eastern Area	Oakland, CA
CPT	14	03	01	Legal Asst Off	Anniston Army Depot	Anniston, AL
MAJ	09	01A	01	Judge Advocate	USA Dep Newcumberland	Newcumberland, PA
CPT	44	02	01	Legal Asst Off	USA Depot Seneca	Romulus, NY
MAJ	26C	01A	01	Legal Advr	USA TSARCOM	St Louis
CPT	08C	01A	01	Trial Counsel	172d Inf Bde	Ft Richardson
CPT	08C	01A	02	Trial Counsel	172d Inf Bde	Ft Richardson
CPT	08C	02A	01	Defense Counsel	172d Inf Bde	Ft Richardson
CPT	08C	02A	02	Defense Counsel	172d Inf Bde	Ft Richardson
CPT	03B	02	01	Asst SJA	USA Garrison	Ft Ord
CPT	03B	02	02	Asst SJA	USA Garrison	Ft Ord
LTC	05	02	01	Dep SJA	USA Garrison	Ft Bragg
LTC	05A	01	01	Ch, Mil Affrs	USA Garrison	Ft Bragg
MAJ	05A	03	01	Contract Law Off	USA Garrison	Ft Bragg

GRD	*PARA*	*LIN*	*SEQ*	*POSITION*	*AGENCY*	*CITY*
MAJ	05A	04	01	Judge Advocate	USA Garrison	Ft Bragg
CPT	05A	05	01	Judge Advocate	USA Garrison	Ft Bragg
LTC	05B	01	01	Ch, Mil Justice	USA Garrison	Ft Bragg
MAJ	05B	03	01	Trial Counsel	USA Garrison	Ft Bragg
CPT	05B	04	01	Asst JA	USA Garrison	Ft Bragg
CPT	05B	05	01	Asst JA	USA Garrison	Ft Bragg
CPT	05B	07	01	Defense Counsel	USA Garrison	Ft Bragg
CPT	05B	08	01	Trial Counsel	USA Garrison	Ft Bragg
MAJ	05C	02	01	JA	USA Garrison	Ft Bragg
MAJ	05D	01	01	Clms Off	USA Garrison	Ft Bragg
LTC	03	01	01	SJA	101st Abn Div	Ft Campbell
CPT	03A	02	04	Trial Counsel	101st Abn Div	Ft Campbell
MAJ	03B	01	01	Ch, Def Counsel	101st Abn Div	Ft Campbell
CPT	03B	02	02	Defense Counsel	101st Abn Div	Ft Campbell
CPT	03B	02	03	Defense Counsel	101st Abn Div	Ft Campbell
CPT	03B	02	04	Defense Counsel	101st Abn Div	Ft Campbell
CPT	03C	02	01	Asst SJA	101st Abn Div	Ft Campbell
CPT	03D	05	01	Asst SJA-DC	USA Garrison	Ft Stewart
MAJ	03E	01	01	Chief	USA Garrison	Ft Stewart
CPT	52C	01	01	Asst SJA	USA Garrison	Ft Stewart
LTC	03	02	01	Dep SJA	USA Garrison	Ft Hood
LTC	03B	01	01	Ch, Crim Law	USA Garrison	Ft Hood
MAJ	03E	01	01	Ch, Legal Asst Of	USA Garrison	Ft Hood
CPT	03B	03	01	Defense Counsel	5th Inf Div	Ft Polk
CPT	03B	03	02	Defense Counsel	5th Inf Div	Ft Polk
CPT	03B	03	03	Defense Counsel	5th Inf Div	Ft Polk
CPT	03B	03	04	Defense Counsel	5th Inf Div	Ft Polk
CPT	03B	04	02	Trial Counsel	5th Inf Div	Ft Polk
CPT	03B	04	03	Trial Counsel	5th Inf Div	Ft Polk
CPT	03B	04	04	Trial Counsel	5th Inf Div	Ft Polk
MAJ	03C	01	01	Asst SJA	5th Inf Div	Ft Polk
MAJ	02A	02	01	Ch, Def Counsel	USA Garrison	Ft Riley

GRD	*PARA*	*LIN*	*SEQ*	*POSITION*	*AGENCY*	*CITY*
MAJ	02B	03	01	Ch, Legal Asst	USA Garrison	Ft Riley
CPT	02C	02	01	Asst JA	USA Garrison	Ft Riley
LTC	03	02	01	Asst SJA	USA Garrison	Ft Carson
MAJ	03B	04	01	Ch, Def Counsel	USA Garrison	Ft Carson
CPT	03B	06	02	Defense Counsel	USA Garrison	Ft Carson
CPT	03B	06	03	Defense Counsel	USA Garrison	Ft Carson
CPT	03B	06	04	Defense Counsel	USA Garrison	Ft Carson
CPT	03B	07	03	Trial Counsel	USA Garrison	Ft Carson
CPT	03B	07	04	Trial Counsel	USA Garrison	Ft Carson
LTC	03	02	01	Asst JA	Ft McCoy	Sparta, WI
CPT	03B	03	01	JA	Ft McCoy	Sparta, WI
CPT	03B	03	02	JA	Ft McCoy	Sparta, WI
CPT	03B	03	03	JA	Ft McCoy	Sparta, WI
CPT	03B	03	04	JA	Ft McCoy	Sparta, WI
MAJ	03C	01	01	Mil Aff Leg Asst O	Ft McCoy	Sparta, WI
CPT	03C	02	01	Mil Aff Leg Asst O	Ft McCoy	Sparta, WI
CPT	03C	02	02	Mil Aff Leg Asst O	Ft McCoy	Sparta, WI
MAJ	66	02	01	JA	Ft McCoy	Sparta, WI
LTC	03A	01	01	Ch, Crim Law Br	9th Inf Div	Ft Lewis
MAJ	03D	01	01	Ch, Admin Law Br	9th Inf Div	Ft Lewis
CPT	21J	01	01	JA	9th Inf Div	Ft Lewis
MAJ	03B	01	01	Chief	USA Garrison	Ft Buchanan
CPT	03B	02	01	JA	USA Garrison	Ft Buchanan
MAJ	03D	01	01	Ch, JA	USA Garrison	Ft Buchanan
CPT	03D	02	01	JA	USA Garrison	Ft Buchanan
CPT	03E	02	01	JA	USA Garrison	Ft Buchanan
CPT	03B	03	01	Asst JA Instr	USA Transportation Cen	Ft Eustis
MAJ	05F	02	01	Mil Affrs Off	USA Armor Cen	Ft Knox
MAJ	04A	03	01	Sr Def Counsel	USA Inf Cen	Ft Benning
LTC	04B	02	01	Asst Ch, MALAC	USA Inf Cen	Ft Benning
CPT	04B	05	01	Admin Law Off	USA Inf Cen	Ft Benning
CPT	04B	05	02	Admin Law Off	USA Inf Cen	Ft Benning

GRD	*PARA*	*LIN*	*SEQ*	*POSITION*	*AGENCY*	*CITY*
CPT	04B	07	03	Legal Asst Off	USA Inf Cen	Ft Benning
CPT	04B	08	01	Claims Off	USA Inf Cen	Ft Benning
MAJ	09A	02	01	Asst SJA	USA Signal Cen	Ft Gordon
MAJ	09B	02	02	Asst SJA	USA Signal Cen	Ft Gordon
CPT	22D	22	01	Instr OCS Tng DI	USA Signal Cen	Ft Gordon
CPT	22D	02	02	Instr OCS Tng DI	USA Signal Cen	Ft Gordon
CPT	07A	03	01	JA	AVN Center	Ft Rucker
CPT	07A	03	02	JA	AVN Center	Ft Rucker
MAJ	38A	01	01	Asst SJA	USA Garrison	Ft Chaffee
CPT	38A	03	02	Asst SJA	USA Garrison	Ft Chaffee
CPT	38A	03	03	Asst SJA	USA Garrison	Ft Chaffee
CPT	38A	03	04	Asst SJA	USA Garrison	Ft Chaffee
CPT	38A	03	05	Asst SJA	USA Garrison	Ft Chaffee
CPT	38A	03	06	Asst SJA	USA Garrison	Ft Chaffee
CPT	38A	03	07	Asst SJA	USA Garrison	Ft Chaffee
MAJ	38B	02	01	Admin Law Off	USA Garrison	Ft Chaffee
MAJ	38B	02	02	Admin Law Off	USA Garrison	Ft Chaffee
CPT	38B	04	01	Asst SJA	USA Garrison	Ft Chaffee
CPT	38B	04	02	Asst SJA	USA Garrison	Ft Chaffee
CPT	38B	04	03	Asst SJA	USA Garrison	Ft Chaffee
CPT	05A	04	02	Trial Counsel	USA FA Cen	Ft Sill
CPT	05A	07	01	Defense Counsel	USA FA Cen	Ft Sill
CPT	05A	07	02	Defense Counsel	USA FA Cen	Ft Sill
CPT	05A	07	03	Defense Counsel	USA FA Cen	Ft Sill
MAJ	05B	03	01	Admin Law Off	USA FA Cen	Ft Sill
MAJ	05B	03	02	Admin Law Off	USA FA Cen	Ft Sill
CPT	05B	05	01	Proc Fis Law Off	USA FA Cen	Ft Sill
CPT	05B	07	01	Legal Asst Off	USA FA Cen	Ft Sill
CPT	05B	07	02	Legal Asst Off	USA FA Cen	Ft Sill
CPT	05B	07	03	Legal Asst Off	USA FA Cen	Ft Sill
MAJ	05	01A	01	Dep SJA	USA Admin Cen	Ft B Harrison
CPT	05	03A	01	Asst JA	USA Admin Cen	Ft B Harrison

GRD	*PARA*	*LIN*	*SEQ*	*POSITION*	*AGENCY*	*CITY*
CPT	11D	06	01	Instr	USA Intel Cen	Ft Huachuca
CPT	11D	06	02	Instr	USA Intel Cen	Ft Huachuca
CPT	11D	06	03	Instr	USA Intel Cen	Ft Huachuca
MAJ	04A	05	01	Instr Mid East	USAIMA CA Satl Sch E	Ft Bragg
MAJ	12	01	01	Asst JA	ARNG TSA Cp Atterbury	Edinburg, IN
MAJ	12	01	02	Asst JA	ARNG TSA Cp Atterbury	Edinburg, IN
MAJ	12	02	02	Asst JA	ARNG TSA Cp Atterbury	Edinburg, IN
CW4	02	03	01	Legal Admin Tech	1st Inf Div	Ft Riley
CW4	03A	01	01	Legal Admin Tech	USA Garrison	Ft Hood
CW4	03A	01	01	Legal Admin Tech	5th Inf Div	Ft Polk
CW4	04	10	01	Legal Admin Tech	USA Garrison	Ft Sam Houston
CW4	04	04	01	Legal Admin Tech	USA Garrison	Ft Bragg
CW4	03	03	01	Legal Admin Tech	101st Abn Div	Ft Campbell

4. Law School Liaison Officer Program

The Law School Liaison Officer program was established in June 1973. The program utilizes reserve component judge advocates who are designated as liaison officers to one or more law schools. These designated officers provide a source of information for law students and recent law graduates concerning service in the Judge Advocate General's Corps.

These liaison officers perform a vital Corps function as adjutant recruiters to the active army regional "field screening officers" who are the primary recruiting contact for future applicants for the Judge Advocate General's Corps. Close coordination is maintained between the liaison officer and the regional field screening officer.

Liaison officers receive a letter of designation and a packet of material with which to answer questions. One retirement point for each accumulated period of two hours is authorized for this vital recruiting effort (Rule 16, AR 140–185).

A roster indicating designated liaison officers and the schools served is printed below. Reserve component judge advocates who are interested in serving as a liaison officer to one of the eight law schools presently without a liaison officer (University of Arizona, Arizona State University, Golden Gate University, University of San Francisco, Whittier College, St. Louis University, Washington University, Creighton University) please contact Captain James E. McMenis, Chief, Unit Liaison and Training Office, Reserve Affairs Department, TJAGSA (telephone 804-293-6122).

RESERVE COMPONENT LAW SCHOOL LIAISON OFFICERS

	Institution	*Liaison Officer and Address*	*Telephone No.*
ALABAMA			
Birmingham	Samford University Cumberland School of Law	CPT William C. Tucker, Jr. 800 First National— Southern Natural Building Birmingham, AL, 35203	205-328-8141

	Institution	*Liaison Officer and Address*	*Telephone No.*
ALABAMA cont.			
University	University of Alabama School of Law	MAJ Vernon N. Hansford 62 The Highlands Tuscaloosa, AL 35401	205-348-7494
ARKANSAS			
Fayetteville	University of Arkansas School of Law	COL Charles N. Carnes 741 North Lewis Fayetteville, AR 72701	501-575-5600
Little Rock	University of Arkansas School of Law	CPT Ora F. Harris University of Arkansas at Little Rock, School of Law Little Rock, AR 72201	501-375-6444
CALIFORNIA			
Berkeley	University of California School of Law	CPT Robert L. Leslie c/o McInerney and Dillon Ordway Building 1 Kaiser Plaza Oakland, CA 94612	415-465-7100
Davis	University of California Law School (Davis)	MAJ John A. Dougherty 841 Lagoleta Sacramento, CA 95825	916-444-0520
Los Angeles	Loyola University of Los Angeles School of Law	CPT Michael Shapiro 23150 Crenshaw Boulevard Torrance, CA 90505	213-530-7933
	Southwestern University School of Law	CPT Andrew D. Amerson 3166 South Butler Avenue Los Angeles, CA 90066	213-736-2200
	University of California Law School (UCLA)	MAJ James L. Racusin 40140 Lorne Street Winnetka, CA 91306	213-787-3350
	University of Southern California Law Center	MAJ Hugh I. Biele 810 California Avenue Santa Monica, CA 90403	213-614-3493
Malabu	Pepperdine University School of Law	LTC John L. Moriarity 14123 Victory Boulevard Van Nuys, CA 91401	213-988-8222
Sacramento	California Western School of Law	COL David M. Gill Box 2724 San Diego, CA 92112	714-236-4006

	Institution	*Liaison Officer and Address*	*Telephone No.*
CALIF. cont.			
	University of the Pacific McGeorge School of Law	LTC Fred K. Morrison Professor of Law McGeorge School of Law University of the Pacific 3200 Fifth Avenue Sacramento, CA 95817	916-449-7101
		MAJ John A. Dougherty 841 Lagoleta Sacramento, CA 95825	916-444-0520
San Diego	University of San Diego School of Law	COL David M. Gill Box 2724 San Diego, CA 92112	714-236-4006
San Francisco	Hastings College of Law	LTC John G. Milano Milano & Cimmet Civic Center Bldg, 507 Polk Street San Francisco, CA 94102	415-441-4410
Santa Clara	University of Santa Clara School of Law	CPT Jonathan Glidden 2898 Bryant Street Palo Alto, CA 94306	408-462-1565
Stanford	Stanford Law School	CPT Jonathan Glidden 2898 Bryant Street Palo Alto, CA 94306	408-462-1565
COLORADO			
Boulder	University of Colorado School of Law	LTC Charles B. Howe 4605 Talbot Drive Boulder, CO 80303	303-444-2456
Denver	University of Denver College of Law	MAJ William J. Hybl 10 Lake Circle Colorado Springs, CO 80906	303-633-7733
CONNECTICUT			
Bridgeport	University of Bridgeport School of Law	CPT G. Kenneth Bernhard 11 Burritts Landing Westport, CT 06880	203-334-9421
New Haven	Yale Law School	MAJ David A. Gibson 35 Hickory Road Branford, CT 06405	203-932-3621
West Hartford	University of Connecticut School of Law	COL Robert L. Hill 85 Ledyard Road West Hartford, CT 06117	203-273-6652

	Institution	*Liaison Officer and Address*	*Telephone No.*
DELAWARE			
Wilmington	Widener College Delaware Law School	COL Stanford Shmukler Twelfth Floor 1314 Chestnut Street Philadelphia, PA 19107	215-732-3400
DISTRICT OF COLUMBIA			
	American University Washington College of Law	CPT Mary F. Slattery 4 Monroe Street, Apartment 911 Rockville, MD 20850	202-576-2531
		LTC David Ross P.O. Box 398 Upper Marlboro, MD 20870	301-952-3896
	Antioch School of Law	CPT Stephen Aronson 5764 Stevens Forrest Road Apartment 404 Columbia, MD 21045	202-389-4395
	Catholic University of America Columbus School of Law	CPT Stephen Aronson 5764 Stevens Forrest Road Apartment 404 Columbia, MD 21045	202-389-4395
		CPT Mary F. Slattery 4 Monroe Street, Apartment 911 Rockville, MD 20850	202-576-2531
	George Washington University National Law Center	COL Francis S. Elliott 6A 232 Forrestal Building Washington, DC 20585	202-252-6902
		CPT Richard C. Goodwin c/o Robert Ammons, P.A. 6188 Oxon Hill Road, Suite 601 Oxon Hill, MD 20021	301-567-3000
	Georgetown University Law Center	COL Stanley J. Glod 1735 K Street N.W., Suite 1200 Washington, DC 20006	202-467-5424
	Howard University School of Law	LTC Richard R. Clark 7509 14th Street, N.W. Washington, DC 20012	202-628-4222
FLORIDA			
Coral Gables	University of Miami School of Law	LTC John M. Thomson 925 Alphonso Avenue Coral Gables, FL 33146	305-445-5475

FLORIDA cont.	*Institution*	*Liaison Officer and Address*	*Telephone No.*
Ft Lauderdale	Nova University Center for the Study of Law	LTC John M. Thomson 925 Alphonso Avenue Coral Gables, FL 33146	305-445-5475
Gainesville	University of Florida College of Law	CPT Jeffery L. Arnold 217 Cherokee Drive Hinesville, GA 31313	912-876-0111
St. Petersburg	Stetson University College of Law	CPT John W. Andrews 6731 13th Avenue North St. Petersburg, FL 33710	813-877-1867
Tallahassee	Florida State University Law School	COL Bjarne B. Andersen, Jr. 2237 Limerick Drive Tallahassee, FL 32308	904-983-4791
GEORGIA			
Athens	University of Georgia School of Law	CPT Jeffery L. Arnold 217 Cherokee Drive Hinesville, GA 31313	912-876-0111
		CPT James L. Brazee P.O. Box 32309 Decatur, GA 30032	404-524-4466
	University of Georgia School of Law	CPT William C. Bushnell 175 Devonshire Drive Athens, GA 30606	404-549-2673
Atlanta	Emory University School of Law	CPT Jeffery L. Arnold 217 Cherokee Drive Hinesville, GA 31313	912-876-0111
		CPT James L. Brazee P.O. Box 32309 Decatur, GA 30032	404-524-4466
Macon	Mercer University Walter F. George School of Law	CPT Jeffery L. Arnold 217 Cherokee Drive Hinesville, GA 31313	912-876-0111
		CPT William J. Doll 66 Luckie Street, N.W. Suite 620 Atlanta, GA 30303	404-524-6878
HAWAII			
Honolulu	University of Hawaii School of Law	COL Donald C. Machado 4236 Puu Panini Avenue Honolulu, HI 96816	808-438-1383

	Institution	*Liaison Officer and Address*	*Telephone No.*
IDAHO			
Moscow	University of Idaho College of Law	MAJ Seward H. French III 164 North Lloyd Circle Idaho Falls, ID 83401	203-523-4445
ILLINOIS			
Carbondale	Southern Illinois University School of Law	LTC Richard H. Mills Justice, Appellate Court of Illinois P.O. Box F Virginia, IL 62691	217-452-3075
Champaign	University of Illinois School of Law	LTC Richard H. Mills Justice, Appellate Court of Illinois P.O. Box F Virginia, IL 62691	217-452-3075
Chicago	John Marshall School of Law	CPT Michael F. Cahill States Attorney Office 2600 South California Avenue Chicago, IL 60608	312-542-2900
	Illinois Institute of Technology Chicago-Kent College of Law	CPT Joseph M. Claps 407 Ashland Avenue 3F River Forest, IL 60305	312-542-2924
		LTC Michael I. Spak Chicago-Kent College of Law 77 South Wacker Drive Chicago, IL 60606	312-782-6616
	University of Chicago School of Law DePaul University College of Law	LTC Michael I. Spak Chicago-Kent College of Law 77 South Wacker Drive Chicago, IL 60606	312-782-6616
	Loyola University College of Law Northwestern University College of Law		
Glen Ellyn	Northern Illinois University College of Law	CPT Terrence J. Benshoff 123 Grove Avenue Glen Ellyn, IL 60137	312-332-0913
INDIANA			
Bloomington	Indiana University School of Law—Bloomington	COL Theodore D. Wilson 8170 Ravenrock Drive Indianapolis, IN 46256	317-923-4573

INDIANA cont.	*Institution*	*Liaison Officer and Address*	*Telephone No.*
Indianapolis	Indiana University School of Law—Indianapolis	COL Theodore D. Wilson 8170 Ravenrock Drive Indianapolis, IN 46256	317-923-4573
Notre Dame	Notre Dame Law School	COL Theodore D. Wilson 8170 Ravenrock Drive Indianapolis, IN 46256	317-923-4573
Valparaiso	Valparaiso University School of Law	COL Theodore D. Wilson 8170 Ravenrock Drive Indianapolis, IN 46256	317-923-4573
IOWA			
Des Moines	Drake Law School	LTC Harold L. Van Voorhis, Jr. 1100 Savings and Loan Building 206 Sixth Avenue Des Moines, IA 50309	515-283-2241
Iowa City	University of Iowa College of Law	CPT Edmund D. Barry 112 East 3rd Street West Liberty, IA 52776	319-627-4797
KANSAS			
Lawrence	University of Kansas School of Law	COL Sam A. Crow U.S. Court House 444 S.E. Quincy Avenue Topeka, KS 66683	913-295-2730
Topeka	Washburn University of Topeka School of Law	COL Sam A. Crow U.S. Court House 444 S.E. Quincy Avenue Topeka, KS 66683	913-295-2730
KENTUCKY			
Covington	Northern Kentucky University Salmon P. Chase College of Law	CPT Thomas S. Sperber 3212 Ashwood Drive Cincinnati, OH 45213	513-632-8330
Lexington	University of Kentucky College of Law	CPT Timothy R. Futrell P.O. Box 919 Cadiz, KY 42211	502-522-3022
Louisville	University of Louisville School of Law	CPT James F. Gordon, Jr. 111 Frederica Street Owensboro, KY 42301	502-683-3535

	Institution	*Liaison Officer and Address*	*Telephone No.*
LOUISIANA			
Baton Rouge	Louisiana State University Law School Southern University School of Law	COL Harold L. Savoie P.O. Box 2881 Lafayette, LA 70501	318-235-7371
New Orleans	Loyola University School of Law	COL Harold L. Savoie P.O. Box 2881 Lafayette, LA 70501	318-235-7371
	Tulane University School of Law	COL Harold L. Savoie P.O. Box 2881 Lafayette, LA 70501	318-235-7371
		COL Wayne S. Woody 49 Dove Street New Orleans, LA 70124	504-866-2751
MAINE			
Portland	University of Maine School of Law	LTC Peter A. Anderson Anderson & Norton 61 Main Street Bangor, ME 04401	207-947-0303
MARYLAND			
Baltimore	University of Maryland School of Law University of Baltimore School of Law	MAJ William S. Little Stark & Little 1 South Redwood Street Baltimore, MD 21202	301-539-3545
MASSACHUSETTS			
Boston	Boston College Law School Boston University Law School New England School of Law	CPT Kevin J. O'Dea Middlesex County District Attorney's Office Cambridge, MA 02138	617-494-4061
	Northeastern University School of Law	CPT Timothy F. O'Brien P.O. Box 150 Boston, MA 02101	617-227-6611
	Suffolk University Law School	CPT Kevin J. O'Dea Middlesex County District Attorney's Office Cambridge, MA 02138	617-494-4061
Cambridge	Harvard Law School	CPT Kevin J. O'Dea Middlesex County District Attorney's Office Cambridge, MA 02138	617-494-4061

MASS. cont.	*Institution*	*Liaison Officer and Address*	*Telephone No.*
Springfield	Western New England College School of Law	CPT John D. Lanoue 18 Crandall Street Adams, MA 01220	413-743-3200
MICHIGAN			
Ann Arbor	University of Michigan Law School	CPT Frederick J. Amrose 16075 Kinross Birmingham, MI 48009	313-961-0473
Detroit	Detroit College of Law	MAJ Michael L. Updike 6061 Venice Drive Union Lake, MI 48085	313-360-2412
	University of Detroit School of Law	CPT Frederick J. Amrose 16075 Kinross Birmingham, MI 48009	313-961-0473
	Wayne State University Law School	MAJ Estes D. Brockman 21519 Virginia Drive Southfield, MI 48076	313-265-2519
Lansing	Thomas M. Cooley Law School	MAJ Ronald C. Emerson 730 Michigan National Tower Corner of Capitol and West Allegan Lansing, MI 48933	517-485-1781
MINNESOTA			
Minneapolis	University of Minnesota Law School	LTC Thomas J. Lyons 2114 East 17th Avenue North St. Paul, MN 55109	612-291-1611
St. Paul	William Mitchell College of Law Hamline University School of Law	LTC Thomas J. Lyons 2114 East 17th Avenue North St. Paul, MN 55109	612-291-1611
MISSISSIPPI			
University	University of Mississippi School of Law	COL Aaron S. Condon School of Law University of Mississippi University, MS 38677	601-232-7421
MISSOURI			
Columbia	University of Missouri School of Law	COL Lowell McCuskey P.O. Drawer L. Linn, MO 65051	314-897-2185

MISSOURI cont.	*Institution*	*Liaison Officer and Address*	*Telephone No.*
Kansas City	University of Missouri School of Law	BG Jack N. Bohm 610 West 67th Terrace Kansas City, MO 64113	816-474-0707
	University of Missouri Kansas City School of Law	LTC Pasco M. Bowman Kansas City School of Law University of Missouri 5100 Rockhill Road Kansas City, MO 64110	919-725-9711
NEBRASKA			
Lincoln	University of Nebraska Law School	CPT Walter E. Zink II Suite 1200 Sharp Building Lincoln, NE 68508	402-475-1075
NEW HAMPSHIRE			
Concord	Franklin Pierce Law Center	MAJ Richard I. Burstein 30 South Main Street Randolph, VT 05060	802-728-9788
		CPT Randall E. Wilbert P.O. Box 868X Nashua, NH 03061	603-883-5501
NEW JERSEY			
Camden	Rutgers University School of Law	COL Stanford Shmukler Twelfth Floor 1314 Chestnut Street Philadelphia, PA 19107	215-732-3400
Newark	Rutgers University School of Law	MAJ James B. Smith Smith & Dembling 266 Lake Avenue Metuchen, NJ 08840	201-494-8404
		LTC Joseph S. Ziccardi Suite 710, Two Penn Center Plaza 15 and John F. Kennedy Boulevard Philadelphia, PA 19102	215-564-1063
	Seton Hall University School of Law	LTC Joseph S. Ziccardi Suite 710, Two Penn Center Plaza 15 and John F. Kennedy Boulevard Philadelphia, PA 19102	215-564-1063

	Institution	*Liaison Officer and Address*	*Telephone No.*
NEW MEXICO			
Albuquerque	University of New Mexico School of Law	1LT Jan E. Mitchell 430 Richmond NE Albuquerque, NM 87106	505-264-7273
NEW YORK			
Albany	Union University Albany Law School	COL Thomas J. Newman 3 Van Dyke Avenue Suffern, NY 10901	914-357-2660
Brooklyn	Brooklyn Law School	MAJ James E. O'Donnell, Jr. District Attorney's Office Kings County Municipal Building Brooklyn, NY 11201	212-834-5000
Buffalo	State University of New York at Buffalo, School of Law	CW2 Joseph G. Kihl 3141 South Park Avenue Lackawanna, NY 14218	716-825-0850
Ithaca	Cornell Law School	CPT Dennis J. Riley Watergate 600 S-1000 Washington, DC 20037	202-342-3569
Jamaica	St. John's University School of Law	COL Thomas J. Newman 3 Van Dyke Avenue Suffern, NY 10901	914-357-2660
New York	Columbia University School of Law	COL Thomas J. Newman 3 Van Dyke Avenue Suffern, NY 10901	914-357-2660
		MAJ Stephen Davis 67 Wall Street New York, NY 10005	212-422-1550
	Fordham University School of Law	COL Thomas J. Newman 3 Van Dyke Avenue New York, NY 10005	914-357-2660
	New York University School of Law	LTC Basil N. Apostle 25-82 Steinway Street Astoria, NY 11103	212-726-7070
	New York Law School	CPT Jeffrey R. Berke Berke & Berke 420 Lexington Avenue New York, New York 10017	212-687-6002
	Yeshiva University Benjamin N. Cardozo School of Law	COL John B. Cartafalsa 123-35 82nd Road Kew Gardens, NY 11415	212-520-3742

NEW YORK cont.	*Institution*	*Liaison Officer and Address*	*Telephone No.*
		MAJ Michael Katz c/o United Airlines 1221 Avenue of Americas, 22nd Floor New York, NY 10020	212-764-2850
Syracuse	Syracuse University School of Law	MAJ Duncan W. O'Dwyer 950 Midtown Tower Rochester, NY 14604	716-325-7515
White Plains	Pace University School of Law	COL Thomas J. Newman 3 Van Dyke Avenue Suffern, NY 10901	914-357-2660
NORTH CAROLINA			
Chapel Hill	University of North Carolina School of Law	CPT Mark E. Sullivan Post Office Box 1501 Raleigh, NC 27602	919-832-9650
Durham	Duke University School of Law North Carolina Central University School of Law	CPT Mark E. Sullivan Post Office Box 1501 Raleigh, NC 27602	919-832-9650
Winston-Salem	Wake Forest University School of Law	CPT Mark E. Sullivan Post Office Box 1501 Raleigh, NC 27602	919-832-9650
NORTH DAKOTA			
Grand Forks	University of North Dakota School of Law	MAJ Murray G. Sagsveen Office of the Attorney General State Capitol Bismarck, ND 58505	701-224-2200
OHIO			
Ada	Ohio Northern University Claude W. Pettit College of Law	MAJ Michael C. Matuska 1709 Hansen Avenue Columbus, OH 43224	614-222-8938
Akron	University of Akron C. Blake McDowell Law Center	CPT Vincent J. Wloch 219 West Boardman Street Youngstown, OH 44503	216-746-6301
Cincinnati	University of Cincinnati College of Law	CPT Thomas S. Sperber 3212 Ashwood Rrive Cincinnati, OH 45213	513-632-8330
Cleveland	Cleveland State University Cleveland-Marshall College of Law	CPT John M. Drain, Jr. 29550 Emery Road Chagrin Falls, OH 44022	216-696-8860

OHIO cont.	*Institution*	*Liaison Officer and Address*	*Telephone No.*
	Case Western Reserve School of Law	CPT Paul C. Giannelli 3129 Chadbourne Road Shaker Heights, OH 44120	216-368-2099
Columbus	Ohio State University Law School Capitol University Law School	COL Charles E. Brant The Midland Building 250 East Board Street Columbus, OH 43215	614-221-2121
Dayton	University of Dayton School of Law	MAJ James A. Brogan 120A Devonshire Drive Dayton, OH 45419	513-228-5120
Toledo	University of Toledo College of Law	CPT Robert L. Guehl 657 East State Street P.O. Box 558 Salem, OH 44460	202-693-1070
OKLAHOMA			
Norman	University of Oklahoma Law Center	CPT Michael P. Cox 300 Timberdell Road Norman, OK 73019	405-329-8800
Oklahoma City	Oklahoma City University School of Law	LTC Stewart Hunter Juvenile Judge Oklahoma City Court House Oklahoma City, OK 73102	405-236-2727
Tulsa	University of Tulsa College of Law	MAJ William W. Hood, Jr. 630 West 7th Tulsa, OK 74127	918-583-5825
OREGON			
Eugene	University of Oregon School of Law	COL Chapin D. Clark 3565 Knob Hill Lane Eugene, OR 97405	503-686-3852
Portland	Lewis and Clark College Northwestern School of Law	COL Richard J. Brownstein 763 NW Powhatan Terrace Portland, OR 97210	503-221-1772
Salem	Willamette University School of Law	LTC Gary E. Lockwood 1811 West Prospect Hood River, OR 97031	503-386-1811
PENNSYLVANIA			
Carlisle	Dickinson School of Law	LTC Charles B. Smith 102 Grubb Road Malvern, PA 19355	215-436-9300

PENNA. cont.	*Institution*	*Liaison Officer and Address*	*Telephone No.*
Philadelphia	University of Pennsylvania Law School	COL Stanford Shmukler Twelfth Floor 1314 Chestnut Street Philadelphia, PA 19107	215-732-3400
	Temple University School of Law	LTC Joseph S. Ziccardi Suite 710, Two Penn Center Plaza 15 and John F. Kennedy Boulevard Philadelphia, PA 19102	215-568-5057
Pittsburgh	Duquesne University School of Law	CPT Anthony W. DeBernardo, Jr. 11 North Main Street Greensburg, PA 15601	412-836-0700
	University of Pittsburgh School of Law	CPT Margaret Patterson 1228 Resaca Place Pittsburgh, PA 15212	412-232-4100
Villanova	Villanova University School of Law	MAJ William T. Cannon 5100 South Convent Lane, Unit 207 Philadelphia, PA 19114	215-564-4448
PUERTO RICO			
Ponce	Catholic University of Puerto Rico Law School	CPT Charles A. Cuprill 15th L URB Jardines FA Ponce, Puerto Rico 00731	809-842-0379
San Juan	University of Puerto Rico Law School Inter-American University School of Law	MAJ Otto J. Riefkohl II P.O. Box 4867 Old San Juan, PR 00936	809-763-3313
SOUTH CAROLINA			
Columbia	University of South Carolina Law Center	LTC Osborne E. Powell Gibbes and Powell 1518 Washington Street Columbia, SC 29201	803-779-8642
SOUTH DAKOTA			
Vermillion	University of South Dakota School of Law	CPT William A. Deam Executive Vice-President American State Bank Yankton, SD 57078	605-665-9613

	Institution	*Liaison Officer and Address*	*Telephone No.*
TENNESSEE			
Knoxville	University of Tennessee College of Law	CPT Robert W. Wilkinson P.O. Box 3447 Oak Ridge, TN 37830	615-482-4928
Memphis	Memphis State University School of Law	COL Thomas E. Douglas, Jr. 3754 Winderwood Circle North Memphis, TN 38128	901-525-5671
		CPT Roy Leon Masengale 1012 North Roselawn Drive West Memphis, AR 72301	501-732-6372
Nashville	Vanderbilt University School of Law	LTC Joe B. Brown 858 Rodney Drive Nashville, TN 37205	615-251-5151
TEXAS			
Austin	University of Texas Law School	MAJ John M. Compere 2000 Frost Bank Tower San Antonio, TX 78205	512-225-3031
Dallas	Southern Methodist University School of Law	MAJ Evan E. Thomas 203 North Venice Duncanville, TX 75116	214-330-3642
Houston	University of Houston Bates College of Law	COL John Jay Douglass (Ret) College of Law University of Houston Houston, TX 77004	713-749-1571
	South Texas College of Law Texas Southern University Thurgod Marshall School of Law University of Houston Bates College of Law	MAJ Anthony B. Cavender Pennzoil Company P.O. Box 2967 Houston, TX 77001	707-236-7886
Lubbock	Texas Tech University School of Law	LTC David C. Cummins School of Law, Texas Tech University P.O. Box 4030 Lubbock, TX 79409	806-742-3785
San Antonio	St. Mary's University School of Law	MAJ John M. Compere 2000 Frost Bank Tower San Antonio, TX 78205	512-225-3031
Waco	Baylor University Law School	LTC Gerald Brown 4100 Briar Cliff Temple, TX 76501	817-778-6761

	Institution	*Liaison Officer and Address*	*Telephone No.*
UTAH			
Provo	Brigham Young University J. Rueben Clark Law School	MAJ Barrie A. Vernon Toole Army Depot Toole, UT 84074	801-833-2536
Salt Lake City	University of Utah College of Law	COL Robert L. Schmid 3471 Brockbank Drive Salt Lake City, UT 84117	801-581-6655
		CPT Donald N. Zillman 4137 Clover Lane Salt Lake City, UT 84117	801-581-5881
VERMONT			
South Royalton	Vermont Law School	MAJ Richard I. Burstein 30 South Main Street Randolph, VT 05060	802-728-9788
VIRGINIA			
Charlottesville	University of Virginia School of Law	CPT Gregory English 6109 Holly Tree Drive Alexandria, VA 22310	202-724-7123
Lexington	Washington and Lee College of Law	CPT Lee B. Liggett VPI and State University 218 Burrus Hall Blacksburg, VA 24061	703-961-6293
Richmond	University of Richmond T.C. Williams School of Law	COL John E. McDonald, Jr. 2108 Stuart Avenue Richmond, VA 23220	804-648-4451
Williamsburg	William and Mary, Marshall Wythe School of Law	MAJ Walter L. Willams, Jr. 101 Curles Circle Williamsburg, VA 23185	804-253-4000
WASHINGTON			
Seattle	University of Washington School of Law	MAJ Andrew W. Maron 6590 N.E. Dapple Court Bainbridge Island, WA 98110	206-682-3333
Spokane	Gonzaga University School of Law	CPT Charles Matthew Andersen P.O. Box 923 Spokane, WA 99210	
Tacoma	University of Puget Sound School of Law	MAJ Frederick O. Frederickson 3610 130th Avenue Bellevue, WA 98005	206-624-8300

	Institution	*Liaison Officer and Address*	*Telephone No.*
WEST VIRGINIA			
Morgantown	West Virginia University College of Law	CPT Ronald L. Chapman 348 North Church Street Ripley, WV 25271	304-372-5466
WISCONSIN			
Madison	University of Wisconsin Law School	MAJ David W. Neeb 1800 First Savings Plaza 205 East Wisconsin Avenue Milwaukee, WI 53202	414-276-0200
		CPT Bruce D. Schrimpf 2480 North Oakland Avenue #208 Milwaukee, WI 53211	414-224-4387
Milwaukee	Marquette University Law School	CPT Paul C. Hemmer N71 W13805 Nicolet Court Menomonee Falls, WI 53051	414-476-4340
		MAJ David W. Neeb 1800 First Savings Plaza 205 East Wisconsin Avenue Milwaukee, WI 53202	414-276-0200

JAGC Personnel Section

PP&TO, OTJAG

1. Reassignments

COLONEL	*FROM*	*TO*
GREEN, James L.	Ft Ord, CA	Ft Belvoir, VA
KENYON, Nathaniel	Europe	OTJAG
MOVSESIAN, Anthony	MacDill, FL	Ft Sam Houston, TX
RABY, Kenneth A.	Ft Knox, KY	Carlisle Barracks, PA
SCHEFF, Richard	USALSA, w/dty sta Ft Gordon, GA	Europe
SMITH, Robert	Europe	Ft Ord, CA
TICHENOR, Carroll	Carlisle Barracks, PA	Europe
LIEUTENANT COLONEL		
BARNES, Holman	USALSA, w/dty sta OTJAG	Korea

LT. COLONEL cont.	*FROM*	*TO*
BRANDENBURG, Andrew	Ft Polk, LA	Europe
CARROLL, Bartlett	Ft Benning, GA	Ft Sheridan, IL
GILLEY, Dewey	TAF Staff College	Europe
HIGGINS, Bernard	Ft Ord, CA	Ft Belvoir, VA
McRORIE, Raymond	WESTCOM	Ft Polk, LA
PAULEY, Earl A.	USALSA, w/dty sta Ft Lewis, WA	OTJAG
PIOTROWSKI, Leonard	Ft Ord, CA	USALSA
PRICE, James	OTJAG	Ft Rucker, AL
SIMS, Benjamin	Ft Leavenworth, KS	Schofield Barracks, HI
WHITE, Charles	Carlisle Barracks, PA	Europe
MAJOR		
ADAMS, John	Korea	Ft Benning, GA
ALTIERI, Richard	USALSA	Ft Leavenworth, KS
ARKOW, Richard	Ft Leavenworth, KS	USALSA
ARQUILLA, Alfred	USALSA, w/dty sta Ft Riley, KS	Ft Meade, MD
BATES, Bernie	Ft Meade, MD	Europe
BUFKIN, Henry	USMA, NY	Ft Bragg, NC
BURGER, James	Ft Leavenworth, KS	Europe
COOPER, Norman	Ft Leavenworth, KS	Fort Lee, VA
COUPE, Dennis	Ft Leavenworth, KS	Europe
DENISON, Gordon	USALSA, w/dty sta Ft Hood, TX	USALSA, w/dty sta Korea
EDWARDS, John	WESTCOM	Ft Leavenworth, KS
FULBRUGE, Charles	TAF Staff College	OTJAG
GODWIN, Futzhugh	TAF Staff College	OTJAG
GORDON, Jonathan	Ft Leavenworth, KS	Europe
GRAY, Kenneth	Europe	Ft Leavenworth, KS
GREENE, William	Europe	Ft Leavenworth, KS
HAAS, Michael	TJAGSA (Stu)	TJAGSA (SF)
HAMILTON, John	Monterey, CA	Europe
HARGUS, Patrick	TJAGSA	Europe

MAJOR cont.	*FROM*	*TO*
HOWELL, John	Ft Hood, TX	USATDS, w/dty sta USALSA
HUFFMAN, Walter	TJAGSA (Stu)	TJAGSA (SF)
KENNETT, Michael	Ft Leavenworth, KS	Europe
KIRCHNER, John	Ft Leavenworth, KS	OTJAG
KOREN, Philip	TJAGSA (Stu)	TJAGSA (SF)
KULLMAN, Thomas	OTJAG	Ft Leavenworth, KS
LANCASTER, Steven	TJAGSA	Ft Leavenowth, KS
LANE, Thomas	Ft McClellan, AL	Schofield Barracks, HI
LEHMAN, William	Norfolk, VA	Ft Richardson, AK
LESH, Newton	Ft Belvoir, VA	USALSA
LIMBAUGH, Daniel	TJAGSA	OTJAG
LONG, Clarence	TJAGSA	USALSA
MACKEY, Patrick	OTJAG	Ft Richardson, AK
MANNING, Jay	Korea	Ft Sam Houston, TX
MARKERT, David	Europe	Ft Ord, CA
McNEILL, David	USALSA	OCLL, WASH DC
MULDERIG, Robert	USALSA	Ft Meade, MD
NARDOTTI, Michael	TJAGSA	OTJAG
NORSWORTHY, Levator	TJAGSA	Korea
PHILLIPS, Stephen	USACIDC	Ft Carson, CO
REYNOLDS, Arthur	Ft Sam Houston, TX	Dallas, TX
REYNOLDS, George	Carlisle Barracks, PA	USAE NGB, WASH, DC
RUPPERT, Raymond	TJAGSA	OTJAG
SEIBOLD, Paul M.	Europe	Europe
SHELTON, Sam	USALSA	USATDS, w/dty sta Ft Richardson, TX
SKLAR, David	Ft Meade, MD	Ft Knox, KY
SMYSER, James	Europe	Lt Leavenworth, KS
WAGNER, Anthony	OTJAG	Lt Leavenworth, KS
WENTINK, Michael	OTJAG	Europe
CAPTAIN		
ANDERSON, Paul	TJAGSA (Stu)	TJAGSA (SF)

CAPTAIN cont.	*FROM*	*TO*
ARNOLD, Henry	Ft Polk, LA	Ft Shafter, HI
BAZZLE, Ervin	TJAGSA	OTJAG
BEESON, John	TJAGSA	Ft McClellan, AL
BRAUN, Byron	Europe	USATDS, w/dty sta Ft Lewis, WA
BURTON, John	TJAGSA	OTJAG
BYCZEK, Thomas	Ft Meade, MD	Korea
CULPEPPER, Deborah	Korea	Ft Lewis, WA
CULPEPPER, Vannoy	Korea	USATDS, w/dty sta Ft Lewis, WA
CURTIS, Robert	TJAGSA	USALSA, w/dty sta Ft Riley, KS
DALE, Buris	TJAGSA	West Point, NY
DEAN, Larry	TJAGSA (Stu)	TJAGSA (SF)
DOUGLAS, William	USALSA	Ft Richardson, AK
DUTERROIL, Jerry	West Point, NY	Ft Sam Houston, TX
FEENEY, Thomas	Ft Lee, VA	OTJAG
FINCH, William	TJAGSA	USACIDC, WASH DC
FLANAGAN, Kevin	TJAGSA	OTJAG
GOUDEAUX, Nolan	TJAGSA	Ft Benning, GA
GUARINO, Judith	Ft Bragg, NC	Ft Hamilton, NY
HENNESSEY, David	TJAGSA	West Point, NY
HEWITT, James	TJAGSA	West Point, NY
HOLEMAN, Jacob	TJAGSA	Ft Sheridan, IL
HUCKABEE, Gregory	Europe	West Point, NY
JOHNSON, Jon	TJAGSA	Ft Campbell, KY
JOHNSTON, Paul	TJAGSA	Europe
JOYCE, John	TJAGSA (Stu)	TJAGSA (SF)
KENNERLY, Holly	Ft Hood, TX	St. Louis, MO
KUKLOK, James	Ft Lewis, WA	Korea
LAUSE, Glen	TJAGSA (Stu)	TJAGSA (SF)
MARCHAND, Michael	TJAGSA (Stu)	TJAGSA (SF)
MARTIN, Robert	West Point, NY	Korea

CAPTAIN cont.	*FROM*	*TO*
McGOWAN, William	TJAGSA	OTJAG
McGRATH, Mary	Ft Sam Houston, TX	Europe
McMENIS, James	TJAGSA	Ft Leonard Wood, MO
MILLARD, Michael	Europe	Carlisle Barracks, PA
MOGABGAB, Stephen	TJAGSA	USALSA, w/dty sta Ft Hood, TX
MORGAN, Donald	TJAGSA	Ft Benning, GA
NACCARATO, Timothy	TJAGSA	OTJAG
NEWBERRY, Robert	TJAGSA	USALSA, w/dty sta Europe
NIEDERPRUEM, Craig	Ft Dix, NJ	Korea
NYMAN, Willard	TJAGSA	Ft Belvoir, VA
OTT, Robert	TJAGSA	USALSA
PATRICK, Jackie	Ft Jackson, SC	Europe
PATTERSON, Michael	Ft Richardson, AK	Ft Shafter, HI
PEACE, Jerry	Europe	Ft Jackson, SC
PEDERSEN, Walton	Korea	USALSA
POWELL, Gayle	TJAGSA	USALSA
PRICE, Wayne	TJAGSA	Europe
PROUDFIT, Larry	TJAGSA	USALSA, w/dty sta Ft Hood, TX
RAMSEY, William	TJAGSA	Ft Polk, LA
READE, Robert	TJAGSA	Ft Hood, TX
ROMANO, Frank	Europe	Romulus, NY
ROOSA, Kenneth	Ft Knox, KY	Ft Richardson, AK
ROSS, Joseph	TJAGSA (Stu)	TJAGSA (SF)
SAVOIE, Philip	Ft Polk, LA	Ft Sam Houston, TX
SCHNEIDER, Karl	Ft Lee, VA	OTJAG
SHEWAN, James	TJAGSA	Europe
SHORT, Robert	TJAGSA	Ft Lee, VA
SHULL, David	TJAGSA	Europe
SOLOW, Shelley	Presidio, SF, CA	Ft Jackson, SC
STAMAND, Gerard	TJAGSA	Europe

CAPTAIN cont.	*FROM*	*TO*
SWITZER, Joseph	TJAGSA	Carlisle Barracks, PA
YOUMANS, Robert	TJAGSA	Ft Hood, TX
YOUNG, John	USALSA	Ft Devens, MA
ZIJLSTRA, Eduard	Seneca AD, NY	Ft Dix, NJ
WARRANT OFFICERS		
ALLRED, Charles	Ft Campbell, KY	Canal Zone
BASTILLE, Wilfred	Ft Carson, CO	Ft McPherson, GA
BLACK, Carl	Mt McPherson, GA	Ft Bragg, NC
DEVIESE, Nila	Ft Richardson, AK	Ft Belvoir, VA
EGOZCUE, Joseph	Ft Meade, MD	Europe
GILLIS, James	Europe	USALSA
KOHLER, Dieter	Ft Hood, TX	Europe
LANOUE, Michael	Ft Ord, CA	Europe
LINDOGAN, Rosauro	Presidio, SF, CA	Ft Ord, CA
PERRY, Robert J.	Ft Hood, TX	Europe
PRICE, Clinton	Ft Belvoir, VA	Ft Richardson, AK
RAMSEY, Alzie	Europe	Europe
RIVES, Christopher	Ft Bragg, NC	Europe
TOPP, John	Ft Dix, NJ	Ft McNair, DC
TUCKER, Larry	Europe	Europe
WEST, Charles	Japan	Ft Carson, CO

2. Revocation

CAPTAIN

VENABLE, Richard — Korea — Europe

3. RA Promotions

COLONEL

WAGNER, Keith A. — 1 Feb 80

LIEUTENANT COLONEL

DeFORD, Maurice H. — 23 Mar 80
WATSON, Kermith G. — 15 Feb 80

4. AUS Promotions

LIEUTENANT COLONEL

CARMICHAEL, Harry S. — 6 Feb 80
COLBY, Edward L. — 7 Feb 80
MITCHELL, Kenneth M. — 6 Feb 80

MAJOR

SWIHART, John B. — 3 Feb 80

5. Funded Legal Education Program

The following 21 officers have been selected for The Judge Advocate General's Funded Legal Education Program for law classes commencing in FY 80:

CPT David E. Bell, AG

CPT Cynthia S. Conners, TC

1LT David E. Fitzkee, FA

1LT David J. Fletcher, AR

1LT Wesley P. Forystek, IN

1LT John B. Garver, AR

1LT Matthew S. Hada, IN

1LT Randall J. Hall, IN

2LT Tamar I. Harris, QM

CPT Kevin R. Hart, TC

1LT Frank J. Hughes, SC

1LT Richard B. Jackson, IN

2LT Patrick F. Morris, MI

2LT David C. Rodearmel, MI

1LT Ronald W. Scott, AMSC

CPT Alfonso Soliz, Jr., CE

2LT Dale A. Stalf, QM

CPT Porcher L. Taylor, III, FA

1LT George B. Thomson, SC

1LT Sterling L. Throssell, SC

1LT Michael W. Wimmer, IN

The following five officers, listed in order of preference, have been selected as alternates for The Judge Advocate General's Funded Legal Education Program for law classes commencing in FY 80 should openings occur in the list of primary selectees by 1 September 1980:

1LT Scott E. Ransick, AD

CPT James P. Pottorff, Jr., SC

1LT Wayne F. Emard, MP

1LT Marjorie R. Mitchell, MI

1LT Jeffery F. White, FA

6. Summer Intern Program

The Corps' Summer Intern Program wil be in full swing again this year. One hundred students have been selected to work in various legal offices throughout CONUS and Europe to expose them to the operation of military legal offices and encourage them to consider appointment as a Judge Advocate. For most of the students, this will be their first contact with military law and lawyers. It is essential that they be given challenging and professionally meaningful work. They must be used as legal paraprofessionals and not as clerical help.

The first interns are scheduled to report for duty on 13 May 1980. Others will follow on 27 May and 9 June.

The Summer Intern Program is essentially a recruiting tool to identify potential JAGC officers and encourage them to apply for a JAGC commission upon graduation from law school and admission to the bar. We want quality lawyers. This program gives us the opportunity to view prospective officers in action.

CLE News

1. TJAGSA CLE Courses

May 5–16: 2d International Law II (5F–F41).

May 7–16: 2d Military Lawyer's Assistant (512–71D20/50).

May 19–June 6: 20th Military Judge (5F–F33).

May 20–23: 11th Fiscal Law (5F–F12).

May 28–30: 1st SJA Responsibilities Under New Geneva Protocols (5F–F44).

June 9–13: 54th Senior Officer Legal Orientation (5F–F1).

June 16–27: JAGSO.

June 16–27: 2d Civil Law (5F-F21).

July 7–18: USAR SCH BOAC/JARC C&GSC.

July 14–August 1: 21st Military Judge (5F–F33).

July 21–August 1: 85th Contract Attorneys' (5F–F10).

August 4–October 3: 93d Judge Advocate Officer Basic (5–27–C20).

August 4–8: 10th Law Officer Management (7A–713A).

August 4–8: 55th Senior Officer Legal Orientation (5F–F1).

August 25–27: 4th Criminal Law New Developments (5F–F35).

September 10–12: 2d Legal Aspects of Terrorism (5F–F43).

September 22–26: 56th Senior Officer Legal Orientation (5F–F1).

2. Civilian Sponsored CLE Courses

For further information on civilian courses, please contact the institution offering the course, as listed below:

AAJE: American Academy of Judicial Education, Suite 539, 1426 H Street NW, Washington, DC 20005. Phone: (202) 783-5151.

ABA: American Bar Association, 1155 E. 60th Street, Chicago, IL 60637.

ALI-ABA: Donald M. Maclay, Director, Office of Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone: (215) 243-1630.

ATLA: The Association of Trial Lawyers of America, Education Department, P.O. Box 3717, 1050 31st St. NW Washington, DC 20007. Phone: (202) 965-3500.

BCGI: Brandon Consulting Group, Inc., 1775 Broadway, New York, NY 10019.

BNA: The Bureau of National Affairs, Inc., 1231 25th Street, N.W., Washington, DC 20037.

CCEB: Continuing Education of the Bar, University of California Extension, 2150 Shattuck Avenue, Berkeley, CA 94704.

CCH: Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, IL 60646.

CCLE: Continuing Legal Education in Colorado, Inc., University of Denver Law Center, 200 W. 14th Avenue, Denver, CO 80204.

CLEW: Continuing Legal Education for Wisconsin, 905 University Avenue, Suite 309, Madison, WI 53706.

DLS: Delaware Law School, Widener College, P.O. Box 7474, Concord Pike, Wilmington, DE 19803.

FBA (FBA-BNA): Conference Secretary, Federal Bar Association, Suite 420, 1815 H Street NW, Washington, DC 20006. Phone: (202) 638-0252.

FLB: The Florida Bar, Tallahassee, FL 32304.

FPI: Federal Publications, Inc., Seminar Division Office, Suite 500, 1725 K Street NW, Washington, DC 20006. Phone: (202) 337-7000.

GCP: Government Contracts Program, George Washington University Law Center, Washington, DC.

GICLE: The Institute of Continuing Legal Education in Georgia, University of Georgia School of Law, Athens, GA 30602.

GWU: Government Contracts Program, George Washington University, 2000 H Street NW, Rm. 303 D2, Washington DC 20052. Phone: (202) 676-6815.

ICLEF: Indiana Continuing Legal Education Forum, Suite 202, 230 East Ohio Street, Indianapolis, IN 46204.

ICM: Institute for Court Management, Suite 210, 1624 Market St., Denver, CO 80202. Phone: (303) 543-3063.

KCLE: University of Kentucky, College of Law, Office of Continuing Legal Education, Lexington, KY 40506.

MCLNEL: Massachusetts Continuing Legal Education —New England Law Institute, Inc., 133 Federal Street, Boston, MA 02108, and 1387 Main Street, Springfield, MA 01103.

MOB: The Missouri Bar Center, 326 Monroe, P.O. Box 119, Jefferson P.O. Box 767, Raleigh, NC 27602.

NCAJ: National Center for Administration of Justice, 1776 Massachusetts Ave., NW, Washington, DC 20036. Phone (202) 466-3920.

NCATL: North Carolina Academy of Trial Lawyers, Education Foundation Inc., P.O. Box 767, Raleigh, NC 27602.

NCCDL: National College of Criminal Defense Lawyers and Public Defenders, Bates College of Law, University of Houston, Houston, TX 77004.

NCDA: National College of District Attorneys, College of Law, University of Houston, Houston, TX 77004. Phone: (713) 749-1571.

NCJJ: National Council of Juvenile and Family, Court Judges, University of Nevada, P.O. Box 8978, Reno, NV 89507.

NCLE: Nebraska Continuing Legal Education, Inc., 1019 Sharpe Building, Lincoln, NB 68508.

NDAA: National District Attorneys Association, 666 North Lake Shore Drive, Suite 1432, Chicago, IL 60611.

NDCLE: North Dakota Continuing Legal Education.

NITA: National Institute for Trial Advocacy, University of Minnesota Law School, Minneapolis, MN 55455.

NJC: National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89507.

NPI: National Practice Institute, 861 West Butler Square, Minneapolis, MN 55403. Phone: 1-800-328-4444 (In MN call (612) 338-1977).

NYSBA: New York State Bar Association, One Elk Street, Albany, NY 12207.

NYSTLA: New York State Trial Lawyers Association, Inc., 132 Nassau Street, New York, NY 12207.

NYULT: New York University, School of Continuing Education, Continuing Education in Law and Taxation, 11 West 42nd Street, New York, NY 10036.

OLCI: Ohio Legal Center Institute, 33 West 11th Avenue, Columbus, OH 43201.

PBI: Pennsylvania Bar Institute, P.O. Box 1027, 104 South Street, Harrisburg, PA 17108.

PLI: Practising Law Institute, 810 Seventh Avenue, New York, NY 10019. Phone: (212) 765-5700.

SBM: State Bar of Montana, 2030 Eleventh Avenue, P.O. Box 4669, Helena, MT 59601.

SBT: State Bar of Texas, Professional Development Program, P.O. Box 12487, Austin, TX 78711.

SLF: The Southwestern Legal Foundation, P.O. Box 707, Richardson, TX 75080.

SNFRAN: University of San Francisco, School of Law, Fulton at Parker Avenues, San Francisco, CA 94117.

TBI: The Bankruptcy Institute, P.O. Box 1601, Grand Central Station, New York, NY 10017.

UDCL: University of Denver College of Law, 200 West 14th Avenue, Denver, CO 80204.

UHCL: University of Houston, College of Law, Central Campus, Houston, TX 77004.

UMLC: University of Miami Law Center, P.O. Box 248087, Coral Gables, FL 33124.

UTCLE: Utah State Bar, Continuing Legal Education, 425 East First South, Salt Lake City, UT 84111.

VACLE: Joint Committee of Continuing Legal Education of the Virginia State Bar and The Virginia Bar Association, School of Law, University of Virginia, Charlottesville, VA 22901.

May

1: FLB, Pharmacology & the Trial Lawyer, Miami, FL.

1–2: PLI, Usury Laws & Modern Business, New York City, NY.

2: NYSBA, Art of Cross Examination, New York City, NY.

2: SBT, Family Law, Houston, TX.

2: FLB, Family Law, Miami, FL.

2: PBI, Law of Credit & Sales, Harrisburg, PA.

2: FLB, Pharmacology & the Trial Lawyer, Tampa, FL.

4–23: NJC, General Jurisdiction—General, University of Nevada, Reno, NV.

4–9: NJC, Sentencing Felons—Graduate, University of Nevada, Reno, NV.

5–6: NYULT, Estate Planning, New York City, NY.

5–6: FPI, Terminations of Government Contracts, Washington, DC.

5–7: FPI, Contracting with the Little Guys, Washington, DC.

5–7: FPI, Procurement for Lawyers, Washington, DC.

8–9: PLI, Advanced Will Drafting, New York City, NY.

9: CCLE, Domestic Relations, Denver, CO.

9–10: PLI, Criminal Advocacy, New York City, DY.

9–11: NCCDL, Advanced Cross-Examination Workshop, Louisville, KY.

11–16: NCDA, Prosecutor's Office Administrator Course—Part II, Houston, TX.

12–14: FPI, Changes in Government Contracts, Washington, DC.

12–15: FPI, Fundamentals of Government Contracting, Las Vegas, NV.

13–6/1: PLI, Trial Advocacy, New York City, NY.

14–16: PLI, Estate Planning, Chicago, IL.

14–16: PLI, Fundamental Concepts of Estate Planning, New York City, NY.

15–16: PLI, Use of Trusts in Estate Planning, Chicago, IL.

15: PBI, Employment Discrimination, Philadelphia, PA.

15–16: PLI, FTC—Consumer Protection Law Institute, Chicago, IL.

16: UTCLE, Depositions, Strategy, Techniques, Salt Lake City, UT.

18–23: NJC, Criminal Evidence—Graduate, University of Nevada, Reno, NV.

18–25: NITA, Trial Advocacy—Part II, Tucson, AZ.

19–20: FPI, Terminations of Government Contracts, Berkeley, CA.

19–22: FPI, ERISA Today, Washington, DC.

19–24:SBT, Practice Skills, Houston, TX.

19–22: GCP, Government Contract Claims, Washington, DC.

21–23: FPI, Practical Negotiation of Government Contracts, Washington, DC.

22–23: ABA, Affirmative Action, Washington, DC.

23: GICLE, Evidence, Augusta, GA.

23: FLB, Bankruptcy, Tallahassee, FL.

26: NCCDL, Trial Practice I, Houston, TX.

29–31: ATLA, Third Annual Camp Pendleton CLE Program, Camp Pendleton, CA.

30: FLB, Bankruptcy, Miami, FL.

June

1–13: NCJJ, Summer College, Reno, NV.

2–11: KCLE, Trial Advocacy, Lexington, KY.

2–3: FPI, Commercial Contracting, Washington, DC.

2–4: FPI, Bonds, Liens, & Insurance, San Diego, CA.

2–6: CCLE, Government Construction Contracting, Denver, CO.

4–6: SLF, Environmental Law & Regulation & the Oil & Gas Business, Dallas, TX.

4–6: PLI, Fundamental Concepts of Estate Planning, New Orleans, LA.

4–7: NCATL: Trial Advocacy, Winston-Salem, NC.

4–6: FPI, Inspection, Acceptance, & Warranties, Denver, CO.

5–7: VACLE, Federal Taxation, Charlottesville, VA.

5–6: PLI, International Litigation, New York City, NY.

6: GICLE, Evidence, Atlanta, GA.

6: PBI, Conflicts of Interests, Philadelphia, PA.

8–14: NCDA, Executive Prosecutor Course, Houston, TX.

9–10: PLI, Use of Trusts in Estate Planning, Los Angeles, CA.

9–13: BCGI, Computer Contracts: Structure, Negotiation & Management, New York City, NY.

9–11: FPI, Changes in Government Contracts, Berkeley, CA.

11–13: FPI, Contracting for Services, Berkeley, CA.

12–13: PLI, Law Office Management, New York City, NY.

12: FLB, Criminal Law, Pensacola, FL.

12: FLB, Bankruptcy, Jacksonville & Palm Beach, FL.

12: PBI, Workmen's Compensation, Philadelphia, PA.

13: PBI, Workmen's Compensation, Pittsburgh, PA.

13: SCB, Trial Advocacy: Trial Motions & Examinations of Lay Witnesses, Columbia, SC.

14: CCLE, Real Estate, Denver, CO.

15–27: NJC, The Judge and The Trial—Graduate, University of Nevada, Reno, NV.

16–17: PLI, Current Developments in Bankruptcy, New York City, NY.

16–20: SLF, Managing Criminal Investigations: Homicide Workshop, Richardson, TX.

16–27: NCCDL, Trial Practice II, Houston, TX.

16–20: AAJE, Constitutional Criminal Procedure, Boston, MA.

18–20: PLI, Estate Planning, New York City, NY.

19: VACLE, Recent Developments in the Law, Virginia Beach, VA.

20: UTCLE, Preparing a Case for Trial, Salt Lake City, UT.

21-22: CCLE, Child Custody, Denver, CO.

22-27: ALIABA, Estate Planning in Depth, Madison, WI.

23-25: FPI, Practical Negotiation of Government Contracts, Los Angeles, CA.

26: FLB, Criminal Law, Orlando, FL.

26-27: FPI, Construction Labor Relations, Washington, DC.

26-27: PLI, Disapproving Federal Cases, New York City, NY.

27: FLB, Criminal Law, Tallahassee, FL.

July

1: PBI, Workmen's Compensation, Harrisburg, PA.

2-4: NCLE, Estate Planning Institute, Vail. CO.

6-11: ALIABA, Environmental Litigation, Boulder, CO.

6-24: NCDA, Career Prosecutor Course, Houston, TX.

7-18: AAJE, Trial Judges Academy, Boulder, CO.

10-11: PLI, Law Office Management, San Francisco, CA.

10-11: PLI, Bankruptcy Reform Act for Bank Counsel, San Francisco, CA.

12-20: PLI, Trial Advocacy, New York City, NY.

13-8/9: ICM, Maangement in the Courts and Justice Environment, Denver, CO.

14-19: SBT, Advanced Civil Trial, San Antonio, TX.

14-15: FPI, Administering Pension Plans, Washington, DC.

14-15: FPI, Medicine for the Lawyer, Las Vegas, NV.

14-18: SNFRAN, Government Contracts, Las Vegas, NV.

17-18: PLI, Antitrust, Minneapolis, MN.

17-19: GICLE, Judiciary Law, Hilton Head Island, SC.

18-19: KCLE, Estate Planning, Lexington, KY.

20-29: MCLNEL, Trial Advocacy (NITA), Cambridge & Springfield, MA.

20-25: ICM, Management for Justice System Supervisors, Aspen, CO.

21-26: SBT, Advanced Civil Trial, Dallas, TX.

21-23: FPI, Construction Contract Modification, San Diego, CA.

21-25: AAJE, Appellate/Trial Judges Writing Programs, Boulder, CO.

24-25: PLI, Current Developments in Bankruptcy, San Francisco, CA.

24-25: PLI, Patent Antitrust Workshop, New York City, NY.

24-25: PLI, Disproving Federal Cases, San Francisco, CA.

24-25: PLI, Environmental Law, San Francisco, CA.

27-8/1: ALIABA, Bankruptcy & Business Reorganizations, Kahuku, HI.

27-8/1: ALIABA, Postgraduate Course in Federal Securities Law, Kahuku, HI.

28-8/8: AAJE, Trial Judges Academy, Charlottesville, VA.

31-8/1: FPI, Medicine for the Lawyer, Washington, DC.

Current Materials of Interest

1. Articles

Fusher, Steven R., Captain, *How the Government Obtains Patent Rights Under the ASPR and FPR Patent Rights Clauses—Part II: The Contractual Rights and Obligations of the Parties,* 20 A.F.L. Rev. 423 (1978).

Graham, Roger Dean, Major, *Products Liability and Tort Risk Distribution in Government Contract Programs,* 20 A.F.L. Rev. 331 (1978).

Harper, Stephen J., Major, *The Defense of Agency. . . . A Handy Trial Tool for the Offensive Minded,* 12 The Advocate 16 (1980).

Peskin, Stephen H., *Attorney-Client Interview Strategy and Tactics,* 12 The Advocate 24 (1980).

Twiss, Robert M., Captain, *An Attack on Court-Martial Jurisdiction: Activation From the Army National Guard and Army Reserve,* 12 The Advocate 2 (1980).

2. Current Messages and Regulations

The following lists of recent messages and changes to selected regulations is furnished for your information in keeping your reference materials up to date. All offices may not have a need for and may not have been on distribution for some of the messages and/or regulations listed.

a. Messages

DTG	*SUBJECT*	*PROPONENT*
152010Z Feb 80	Application of Minor Construction Statutory Limitation and Determination of Separate Project For OSHA Abatement.	DRCIS-EF
152122Z Feb 80	Mandatory Requirements Contracts.	DAAC-ZK
181652Z Feb 80	DA Micropublishing Program.	DAAG-PA
191220Z Feb 80	Utilities Procurement Policy.	DEAN-MPO
192044Z Feb 80	Small and Disadvantaged Business Utilization and ADP Contracting.	DAAC-ZK
050350Z Mar 80	JAGC Career Status Selection Board	DAJA-PT

b. Changes to Regulations

NUMBER	*TITLE*	*CHANGE*	*DATE*
AR 135-178	Separation of Enlisted Personnel	902	1 Mar 80
AR 140-10	Assignments, Attachments, Details and Transfers	903	1 Mar 80
AR 140-158	Enlisted Personnel Classification, Promotion and Induction	902	1 Mar 80
AR 606-5	Identification, Cards, Tags, and Badges	903	11 Feb 80
AR 135-180	Qualifying Service for Retired Pay Nonregular Service	Ch. 1 rescinded by CIR 310-21	15 Dec 79
AR 600-200	Enlisted Personnel Management System	908	1 Mar 80
AR 135-91	Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures	902	1 Mar 80